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No. 2576

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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Transcript of Record.

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JAMES B. SMITH, F. C. MILLS and E. H.  
MAYER,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,  
Defendant in Error.

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VOLUME VII.

(Pages 2305 to 2670, Inclusive.)

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Upon Writ of Error to the United States District Court of the  
Northern District of California, First Division.

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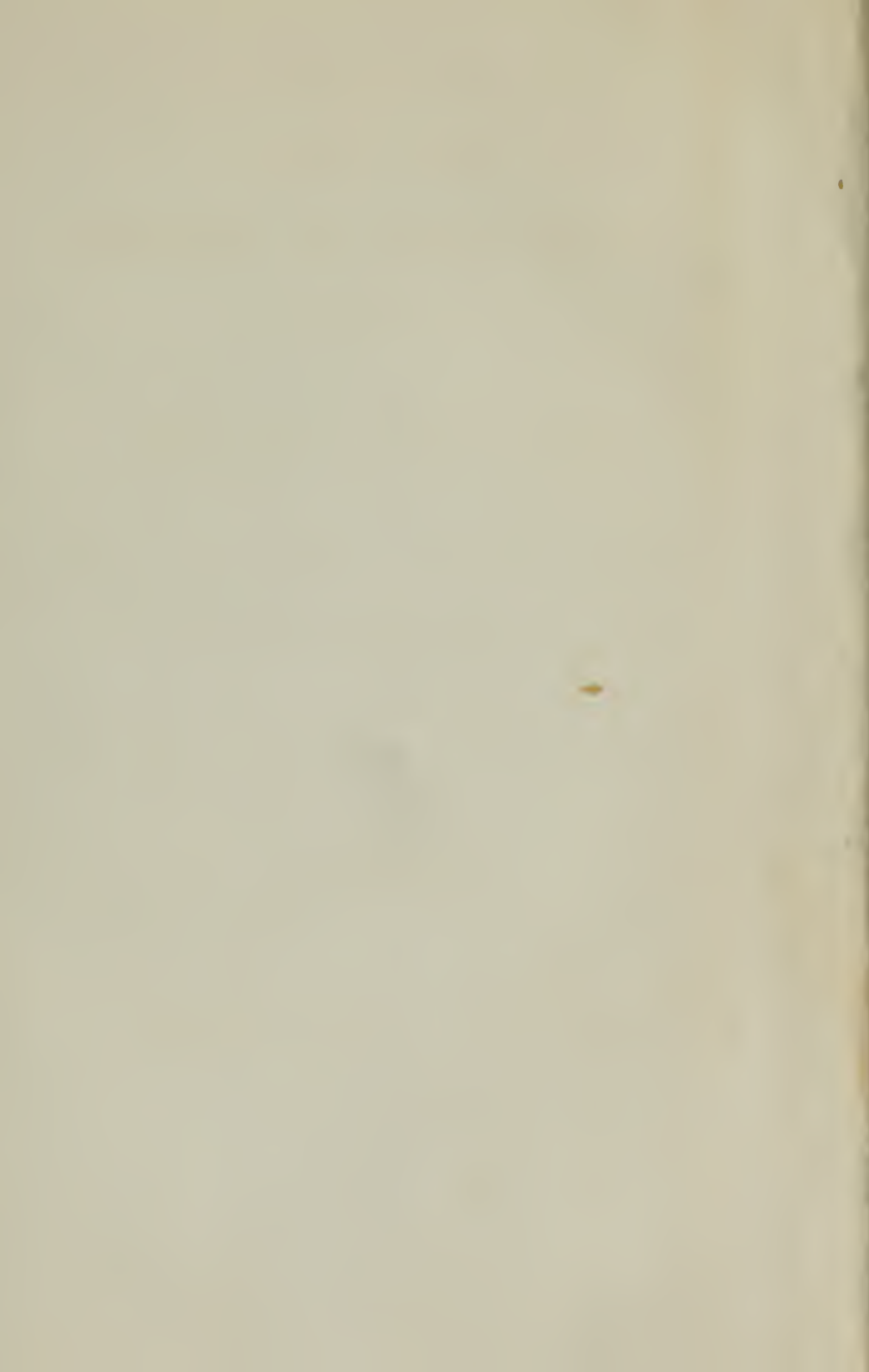
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[Title of Court and Cause.]

State of California,

County of Alameda,—ss.

**Affidavit [of Joseph Stackler, Dated March 3, 1914].**

Joseph Stackler, being first duly sworn deposes and says: I was one of the jurors on the trial of the above-entitled case.

I am a regular reader and subscriber to the San Francisco "Examiner," and during the time of the trial, I read the accounts and items appearing in it, concerning the case. In fact, I laid them aside in my home in order to keep them, and I still have nearly all the issues of the "Examiner" containing accounts of the trial in my home.

I read the *editorials* in the "Examiner" of December 17th, 1913, entitled: "Coal Shipments and Atmosphere," and of February 11th, 1914, entitled: "He Earned The Money," but I do not remember reading the editorial of December 18th, 1913.

JOSEPH J. STACKER.

Subscribed and sworn to before me this 3d day of March, 1914.

[Seal]

F. H. BARTLETT,

Notary Public in and for the County of Alameda,  
State of California.

(The accounts and items referred to in the above affidavit and the editorials referred to in and annexed thereto are set out at length in that certain affidavit of Elliott Johnson, *infra*, relating to the San Francisco "Examiner.") [2036—1968]

[Title of Court and Cause.]

State and Northern District of California,  
County of Alameda,—ss.

[**Affidavit of Joseph Stackler, Dated March 8, 1914.**]

Joseph Stackler, being first duly sworn, deposes and says: A week or more before the close of the trial of the above-entitled case, a group of the jurors were standing in the hallway outside the door of the courtroom discussing the case on trial and the sugar case back East. It was shortly before 2 o'clock in the afternoon that this discussion took place, and Mr. Maher, another of the jurors, did most of the talking according to my recollection.

I do not remember the exact words used, but the substance of them was that the Sugar Company and the Western Fuel Company were big corporations, and that all these big corporations did business along the same lines, and that all of them gave commissions or contributions, and that the Sugar Case was a similar case, only one company was handling sugar and the other coal.

My recollection is that Mr. Bollander was also present and did some of the talking, but the chief speaker was Mr. Maher, and I think that Mr. Becker was also present, but I did not see the article in the "Tribune" and I do not think it was being shown to the jurors at that time.

JOSEPH STACKLER.

Subscribed and sworn to before me this 8th day of March, 1914.

[Seal]

HENRY G. TARDY,  
Notary Public in and for the County of Alameda,  
State of California. [2037—1969]

[Title of Court and Cause.]

County of Alameda,  
State of California,—ss.

**[Affidavit of Joseph Stackler, Dated February 27,  
1914.]**

Joseph Stackler, being first duly sworn, deposes and says: I was one of the jurors on the trial of the above-entitled case.

I read the editorials in the San Francisco "Examiner" upon the date of the issues in which they were contained, these editorials appearing in the "Examiner" of December 17th and February 11th (1913 and 1914). The editorials read by me were headed "Coal Shipments and Atmosphere" and "He Earned The Money," and they are attached to this affidavit.

JOSEPH STACKLER.

Subscribed and sworn to before me this 27th day of February, 1914.

[Seal]

HENRY G. TARDY,  
Notary Public in and for the County of Alameda.

(The editorials referred to and which were annexed to the above affidavit are set out at length in that certain affidavit of Elliott Johnson, *infra*, relating to the San Francisco "Examiner.") [2038—1970]

[Title of Court and Cause.]  
State and Northern District of California,  
County of Santa Clara,—ss.

[**Affidavit of William K. Beans, Dated March 6, 1914.**]

William K. Beans, being first duly sworn, deposes and says:

That he was one of the jurors impaneled to try the above-entitled cause.

That about ten days prior to the time when said cause was finally submitted to the jury for its verdict Fred Becker, another one of the jurors who tried the above cause, handed to affiant to read a newspaper article referring to, or containing, a series of articles distinctly hostile to the defendants herein, commenting at some length in a manner adverse to their defense herein, and likening this case to the American Sugar Refining Company case in New York in which some of that company's officers or employees had been convicted for false weighing. Said Becker had previously given these articles to several other of said jurors to read, and some of them had read the same, and said Becker told affiant at the time of handing him said articles as aforesaid that he ought to read them. Affiant merely glanced at said articles observing their character, and on the following morning returned them to said Becker without further reading them. Affiant is not able at this time to state in what paper said article or articles were published, nor can affiant repeat the language thereof. About said time Thomas C. Maher,



another of said jurors, told affiant that this case was similar to said American Sugar Refining Company case.

That affiant during the trial hereof read the articles [2039—1971] then appearing in the San Francisco "Examiner" regarding this case.

That said Becker told affiant at the time said newspaper article was handed affiant what were the contents of said article, that it referred to the sugar frauds, saying that the sugar people were crooked, and that the Western Fuel people were operating along the same lines.

That the article hereinabove referred to was lengthy and was partly printed in type larger than that ordinarily used in newspapers, and was contained on the front page and according to affiant's recollection also on a subsequent page of said newspaper.

WILLIAM K. BEANS.

Subscribed and sworn this 6th day of March, 1914, before me.

W. F. HENNING,  
Notary Public in and for the County of Santa Clara,  
State of California.

(The "articles then appearing in the San Francisco 'Examiner' regarding this case" are set out at length in that certain affidavit of Elliott Johnson, *infra*, relating to said San Francisco "Examiner.")  
[2040—1972]

[Title of Court and Cause.]

**Affidavit of Elliott Johnson.**

State of California,

City and County of San Francisco,—ss.

**Affidavit of Elliott Johnson [Dated March 5, 1914].**

Elliott Johnson, being first duly sworn, deposes and says: That attached hereto are articles, items and editorials printed in the San Francisco "Examiner," a daily newspaper published in the City and County of San Francisco, during the course of the trial of the above-entitled cause.

ELLIOTT JOHNSON.

Subscribed and sworn to before me this 5th day of March, 1914.

[Seal]

C. B. SESSIONS,

Notary Public in and for the City and County of  
San Francisco, State of California. [2041—  
1973]

**[Newspaper Clippings Referred to in Affidavits in  
Support of Motions for New Trial.]**

**[Newspaper Clipping from] "Examiner," December  
9, 1913.**

**WESTERN FUEL TRIALS TO-DAY.**

Eight Officers and Employees of Company to Face  
Charges of Conspiracy to Defraud.

Eight officers of the Western Fuel Company, indicted by the federal grand jury for criminal conspiracy to defraud the United States of customs dues and full weight on imported coal, will be tried jointly to-day in the United States District Court before

Federal Judge Maurice T. Dooling. The defendants are :

JOHN L. HOWARD, president.

JAMES B. SMITH, manager and director.

J. L. SCHMIDT, treasurer and director.

ROBERT BRUCE, director.

SIDNEY V. SMITH, director.

FREDERICK C. MILLS, superintendent.

E. H. MAYER, weigher.

EDWARD J. SMITH, weigher and former tax collector of San Francisco, who served a term in the penitentiary for embezzlement.

This is the case which attracted nation-wide interest when John L. McNab, former United States Attorney, resigned, claiming that the Western Fuel Company officials had reached high federal administration men at Washington and worked out a tentative plan to block the case.

The case will be presented to-day by Theodore J. Roche and Matt I. Sullivan, special federal prosecutors. The defendants have an imposing array of counsel—E. J. McCutcheon, Warren Olney, Jr., Stanley Moore and Samuel Knight. Both sides said last night that they were ready to proceed without delay.

The government hopes to prove that on all coal imported it received less than the rightful customs dues on account of an elaborate system of short weights; that it was cheated in deliveries of coal to the army transport service and that, in order to carry out these alleged frauds, the engineers of the Toyo Kisen Kaisha (the Japanese trans-Pacific line) and the Pacific Mail Steamship Company were bribed on the

basis of 21½ cents a ton to wink at short weight fuel consignments from the Western Fuel Company.  
[2042—1974]

[Newspaper Clipping from] "**Examiner**," December 10, 1913.

## JURY IS PARTLY CHOSEN TO TRY WEST-ERN FUEL.

Battery of High-Priced Lawyers Spends Day Examining Many Talesmen.

12 Temporarily Selected.

Panel of Men to Try Coal Fraud Case Will Probably Be Filled To-day.

Twelve jurors sat in the box last evening after the Western Fuel Company conspiracy cases, involving gigantic coal frauds against Uncle Sam, had been started in the United States District Court.

One tentatively selected juror, John H. Masterson, was notified that the defense in the coal conspiracy trial expects to use a peremptory challenge on him to-day at 2 o'clock, when the case is resumed.

The jurors, who have been temporarily passed and who will be in the box when court convenes to-day, are the following:

Martin O'Connell, retired foundry-man, whose place of business was formerly in Steuart street and at North Beach.

R. E. Herdman, agent to the Penn Mutual Life Insurance Company, living at Palo Alto.

A. Christianson, manager for the local office of Wells Fargo & Company, whose address is 637A Castro street, San Francisco.



C. A. Doss, contractor and builder, who lives at 2028 East Fifteenth street, Oakland.

Fred Becker, butcher, living and conducting his business in Oakland.

Charles R. Nauert, retired foundry-man, living at Alvarado.

Thomas C. Maher, promoter and dealer in patent appliances, living at 3549 Twenty-third street, San Francisco.

Charles G. McIntosh, vice-president of the Bank of California, living at Woodside, San Mateo county.

William F. Murray, a member of the firm of Murray Brothers, machine works, and living at 908 Guerrero street, San Francisco.

William Beans, a San Jose banker, living in the Garden City.

B. C. Allen, hardware company secretary, living at 669 Twenty-seventh street, Oakland.

John H. Masterson, president of the San Francisco Lumber Company, and living at Belvedere, Marin county.

#### Imposing Array of Lawyers.

Counsel for the Government and for the defendants kept up a running fight yesterday, trying to keep men on and off the jury. And it was an imposing array of lawyers pitted against each other in the initial skirmish in a battle which means either acquittal or disgrace and possibly the penitentiary for eight officials of the Western Fuel Company.

For the United States there sat at the table yesterday not only Special Federal Prosecutors Theodore J. Roach and Matthew I. Sullivan but also Deputy

United States Attorneys Thomas Selvage and Earl Pier. For the Western Fuel Company there were not only Attorneys Samuel Knight, E. J. McCutcheon, Warren Olney Jr., Stanley Moore and A. P. Black, former Assistant United States Attorney, but also Peter F. Dunne, once one of the Southern Pacific's best legal lights.

#### Challenged for Prejudice.

The Government's counsel found fault with the opinion of a number of veniremen yesterday and challenged them for prejudice. Among those thus excused by Judge Dooling were George Boyd of San Rafael, Robert G. Hooker of Hooker & Lent, real estate brokers; Ernest R. Folger, first vice-president of the J. A. Folger Company; A. S. Ferguson, salesman for the Ferguson-Moore Company; E. H. Tryon, who became famous when he went East to the Republican Convention as a Taft delegate; Thomas A. Burns, broker, living at 2505 Devisadero street; George T. Page, ship broker, living at San Rafael, and John Reid, father-in-law of Mayor Rolph.

After this picking and plucking had taken place the Government exercised one of its six peremptory challenges in the case of John T. Gilmartin, manager for the H. S. Crocker Company. The defense reduced the jury box, too, by removing George J. Gallagher, who runs a plumbing and general merchandise business in the Mission. The defense has still nine peremptories. [2043—1975]

[Newspaper Clipping from] "**Examiner,**" December  
13, 1913.

**JURY READY TO TRY FUEL CONSPIRACY.**  
Panel Filled After Challenges Had Been Exhausted  
by Both Sides; Many Talesmen Quizzed.

Judge to Rush Hearing.

Eight Officials of Western Co. Will Listen to Outline  
of U. S. Case Monday Morning.

Western Fuel Jury Chosen.

These Men Will Try Case.

These are the twelve men who will try the officers  
of the Western Fuel Company:

R. E. HERDMAN, soliciting agent of the Penn Mu-  
tual Life Insurance Company, Palo Alto.

FRED BECKER, butcher, Oakland.

THOMAS C. MAHER, patent appliance promoter  
San Francisco.

WILLIAM K. BEANS, banker, San Jose.

B. G. ALLEN, hardware merchant, Oakland.

L. P. BOLANDER, millwright, San Francisco.

R. H. GATLEY, apartment house proprietor, San  
Francisco.

JOHN H. BROMBERGER, musician, Alameda.

J. W. BOCKMAN, hardware merchant, San Fran-  
cisco.

JOSEPH STACKLER, blacksmith, Alameda.

P. W. TREACY, paint merchant, Oakland.

WILLIAM LONG, butcher, Oakland.

The jury which will try the Western Fuel Com-  
pany conspiracy cases was selected in the United

States District Court yesterday. Adjournment was taken until Monday at 10 o'clock, when the government will make its opening statement.

Court convened with forty special veniremen in the courtroom, summoned in twenty-four hours by Marshal Elliot when the regular panel was exhausted last Wednesday. In the examination of the talesmen both sides exhausted their challenges.

John H. Bromberger, a musician, living at 1620 Bay street, Alameda, won a place on the jury and escaped without a challenge, despite the fact that his brother-in-law, T. G. Daniels, holds the federal post of Land Register.

George W. Hunt, a salesman for W. W. Montague and a resident of Oakland at 1028 Fifty-ninth street, admitted, after a lengthy questioning, that he had a "suspicion" that the defendants were guilty. The court excused him.

Joseph Court, a shoe dealer of 1327 Peralto street, Oakland, and H. L. Young, a real estate man, living at 724 Page street in this city, both passed examination, but lost their places in the box through peremptory challenges by the defense.

J. W. Bockman of 541 Haight street, a hardware merchant, suited both sides, as did Joseph Stackler, a blacksmith, living at 1721 Buena Vista avenue, Alameda; P. W. Treacy, a paint merchant and paper hanger of 827 Peralta street, Oakland, and William Long, an Oakland butcher of 1160 Eighth street.

Of the jurors who had lasted over from Wednesday, the Government peremptorily challenged J. M. Taft, the young Oakland dry goods merchant, while



the defense used two peremptories on F. H. Babb, San Jose orchardist, and Martin O'Connell, retired foundryman of this city.

Judge Dooling proposes, in so far as he can do so without hardship to those attendant on the case, to rush the trial. He announced yesterday that sessions would be held five days in the week, including Monday, and that the hours would be from 10 to 12 in the morning and from 2 to 4 in the afternoon.  
[2044—1976]

[Newspaper Clipping from] "Examiner," December 15, 1913.

## TESTIMONY BEGINS IN WESTERN FUEL TRIAL.

Company's Books to Confront Eight Indicted Officials.

The taking of testimony in the trial of the Western Fuel Company conspiracy cases will begin at 10 o'clock this morning in the United States District Court before Judge Dooling.

Special Prosecutors Theodore J. Roche and Matthew I. Sullivan are ready to lay before the jury evidence tending to show that the eight indicted officers of the coal company connived in perpetuating a system of short-weighting, thereby obtaining "drawbacks" on import duties paid to the Government.

After Prosecutor Sullivan has outlined his case to the jury, the books of the company will be introduced and, with the assistance of Secretary David R. Norcross of the fuel company, a foundation will be laid for the further introduction of evidence.

The Western Fuel Company's line of defense, it is understood, will be not only the impeachment of the Government's witnesses, but the assertion that the alleged short weights found in shipments were due to the evaporation of water-soaked coal.  
[2045—1977]

[Newspaper Clipping from] "**Examiner**," December  
16, 1913.

#### NOVEL MOVE BY DEFENSE IN FUEL CASE.

Surprise for Prosecution Comes in Demand  
to Outline Case When Government  
Ends Statement.

Answer Charges in Detail.

Scientific and Climatic Reasons are Given  
to Explain Change in Weight of  
the Same Coal.

The defense in the Western Fuel Company Conspiracy trial sprang a surprise in the United States District Court yesterday morning, when, after Matt I. Sullivan, special prosecutor, had concluded the opening statement for the Government, Attorney Warren Olney, Jr., asked and was given the privilege of making the opening statement for the defendants.

This generally is made only after the prosecution has introduced all its evidence. Olney declared that his clients had been "waiting for months to get their evidence before a fair tribunal," and he was anxious that the jury would have an opportunity to judge all the evidence on the basis of the two opposing explanations.

Olney's chief point was the moisture content of

coal—the declaration that a ton could bulge when watered. This, it was impressed upon the jury, will be one of the bulwarks of the defense—an explanation of why bill of lading weights to this point and barge weights for outgoing vessels differed from the United States Customs weights, thus causing the discrepancies which resulted in the alleged loss of duties to Uncle Sam.

### Coal Loses Weight.

“The Government has charged the Western Fuel Company with short-weighting it on foreign coal entering this port,” said Olney, answering Sullivan’s statement. “But we are prepared to show by the testimony of the Government’s own scientists that freshly mined coal, brought under hatches to this port, will lose weight so that the delivery weight will show a disappearance of 1 per cent in the total bulk. The Volatile elements in the coal vanish, causing this loss.

Olney named a list of Federal experts who, he said, would be summoned as witnesses if the prosecution refused to put them on the stand.

“The Western Fuel Company,” said Olney, “did give \$125 each to the Pacific Mail Company employees. Coal was given to others. These were just gratuities, and the thing was nothing worse than is practiced by nearly every business firm in this city.

### “Tips” to Help Service.

“The payments to the Japanese steamship employees is not in the same category. We found that they expected “tips,” and we gave the engineers first five cents and then two and one-half cents on every

ton put on their vessels. The engineer divided with the rest of the crew.

Answering the statement of Prosecutor Sullivan that there had been crookedness in the loading of the coal bunkers through the manipulation of the scales on the wharves, Olney said that the coal was constantly under the eye of the customs weigher, loaded under his supervision and according to the rules of the Government.

“Coal is not so valuable,” observed Olney, “and the duty is light. Hence there is no necessity of carefully weighing every bucket. One bucket out of sixteen is picked, and it is weighed on a ‘rising beam,’ so that, in its very nature, it is a light weight.”

#### Coal Statistics Given.

The defense combated the statement of the prosecution that hundreds of thousands of dollars were involved in this alleged conspiracy by explaining that in the years from January, 1906, to December, 1912, the total amount of fuel brought into this port and placed on the customs scales was 2,127,843 tons, while the total sales were 2,189,665 tons, showing that the concern had actually sold 61,822 tons more than it had received—that is, the “overrun” had been that great.

“That,” said Olney, “is 2.8 per cent—actually more than the Government alleges. Barge shipments amounted to 751,000 tons, of which 418,000 tons went to the Pacific Mail Company. The ‘average’ was 35,999 tons, figured to be 4.8 per cent. The coal on which ‘drawback’ duties were asked amounted to 20,720 tons.



WHAT GOVERNMENT CHARGES.

ANSWERS BY WESTERN FUEL.

Here are some of the charges, made by the Government, and the explanations, made by the Western Fuel Company:

ACCUSATION—Coal entering this port, was underweight, the Government losing duties thereby.

ANSWER—True, it was wet coal, freshly mined, and there was evaporation on the way to this port.

ACCUSATION—Coal, leaving this port, was overweight, the Government being charged for “draw-backs” from the original duty paid.

ANSWER—Yes, the humidity at the port of San Francisco caused moisture in the coal and so raised its weight.

ACCUSATION—The coal was falsely weighed through connivance of Western Fuel Company and steamship company officials.

ANSWER—The duty on coal was light, and, so, the weighing of coal was not done carefully. It was a “light weight” on a “rising beam.”

ACCUSATION—The Western Fuel Company bribed steamship employees to wink at the short weights of coal on their vessels.

ANSWER—Those payments were only “tips”—just as anybody would give a gratuity to a waiter to get satisfactory treatment. [2046—1978]

[Newspaper Clipping from] "**Examiner**," December  
17, 1913.

SECRETS OF COAL TRUST OFFERED AS  
VENGEANCE.

David Powers, U. S. Witness, is Arrested on Charge  
of Girl; Brother, Once Company Em-  
ployee Says He Will Tell All.

Had Held Back Before Grand Jury, but Now, In-  
censed, He Declares That He Will Take  
Stand Against Western Fuel.

Inquisitorial Body Investigating Suspicion That  
Arrest was Caused to Throw Discredit  
on Testimony Taken Against  
Corporation.

David G. Powers, one of the chief witnesses for the Government in the Western Fuel Company conspiracy trial, was arrested yesterday on a charge of statutory offense against Lena Caduff, a twenty-year-old girl. Edwin A. Powers, his brother, convinced immediately that the defense had arranged a plot to discredit him, announced forthwith that he was now ready to go on the witness-stand and tell unreservedly all that he knew about the coal frauds, which he, as former assistant superintendent of the fuel concern, was in a position to have seen.

Edwin Powers' decision to throw the weight of his testimony in favor of the prosecution fell as a thunderbolt in the camp of the defense, which had been relying all along on his refusal to join his brother, David, and turn informer. Edwin had been

a reluctant and unsatisfactory witness for the prosecution before the Grand Jury.

The defense is said to have relied on this and to be secretly laughing at the inability of the Government to get his whole-hearted support.

Will Tell All the Truth.

"I shall tell all the truth now in this trial," said Edwin Powers last night. "I don't believe in 'snitching,' but this trick puts a different complexion on the case. Blood is thicker than water. My brother is being made the victim of a contemptible 'frame-up,' and there's just enough Irish in me to make me fight.

"I didn't approve of my brother's course in turning informer. In fact, this caused a sharp division in the family. He went his way and I went mine. Frankly, I didn't intend to take the stand he did in this case, and I probably wouldn't have if this new angle in the case hadn't forced me. Now I shall testify of everything I know about the coal frauds; and when I get off the witness-stand there will be little doubt about what the coal company did to cheat the Government."

Edwin Powers, it is generally conceded, will make a stronger witness for the Government than his brother, David. He was assistant superintendent for the Western Fuel Company for five years from 1906 to 1911, in charge of the barge-loading and barge-discharging department under F. C. Mills. He also had charge of Mills' books, and hundreds of the entries, recording "overruns" and underweights, are in his handwriting.

## Close to High Officials.

Edwin Powers had close personal relations during this time with several of the coal company officials now under indictment. He received personal orders from these officials and transmitted others, all having a direct bearing on the conspiracy charge, now being tried in the United States District Court.

The Government prosecutors are confident that, with Edwin Powers' testimony, they will be able to forge an unbreakable link between the operating end of the coal company and the main office. The company has admitted that there were "overruns," that the coal, when weighed, showed startling discrepancies with the Customs weights, and this is all borne out in the books.

Powers' story will contradict the claims made by the defense, that the discrepancies were the result of "evaporation," of "moisture content" and of unavoidable carelessness in handling the scales.

## More Than One Effect.

The arrest of Powers yesterday had more than one effect. Besides bringing Edwin Powers into line *with* [2047—1979]

## COAL SHIPMENTS AND ATMOSPHERE.

Marvelous, indeed, are the works of nature. Consider, now, what happened to the Western Fuel Company, as related by counsel to the judge and jury in the United States District Court Monday morning.

The Western Fuel Company, as the "The Examiner's" readers know, is on trial, charged with cheating the government by short-weighing coal. The government offers in evidence records to show



that the coal weighed into this port was many pounds short of the weight attributed to the same coal when the corporation sold it to ships. The total discrepancy of weights amounts to about 70,000 tons, the duty on which is something of an item, even to your Uncle Samuel.

And now comes Attorney Warren Olney and makes explanations. It seems that on its way to this port from the mines, the coal shrinks in weight, owing to evaporation of moisture, and, on the other hand, after it has been weighed in here and the duties paid, the coal again takes on weight by absorbing an even greater amount of moisture from the humidity of San Francisco's climate.

We regard this nice adjustment of atmosphere conditions to balance the unfortunate discrepancies in the Western Fuel Company's accounts as one of the greatest triumphs yet achieved in the science of meteorology. To be sure, several rude, unlettered personages employed around the waterfront are ready to swear that the weight was added to the coal by moisture directed through a liberal hose, but true science cannot stop to investigate such trivial and non-essential statements.

What we do know is that by a remarkable adaptation of coal shipments to atmospheric conditions the Western Fuel Company's experts have long been able, secretly, to make three tons of coal grow where there were but two tons before.

And that is glory enough for one corporation devoted to scientific pursuits. [2048—1980]

[Newspaper Clipping from] "Examiner," December 18, 1913.

### SCIENTIFIC DISCOVERY RUINED BY CUPID.

Cherchez la femme! With the assistance of Miss Lena Caduff, ably abetted by counsel for the defense, the Government is in a fair way to land some of the scientific manipulators of weights, measures and moisture in jail.

David Powers, the chief Government witness against the Western Fuel Company's officers, was suddenly arrested on a statutory charge preferred by Miss Caduff, who is twenty years of age and, of course, too young to know what she was doing. The law says so, anyhow, so it must be so.

Angered by his brother's arrest, Edwin Power vows he will tell all he knows about the short coal-weighing practices of the defendants. Mr. Power, we regret to say, vigorously and even profanely scoffs at the defendants' explanation of the automatic expansion and contraction of coal under varying conditions of atmospheric humidity. Mr. Power intimates that he will swear that the phenomena were produced by juggling the weighing machines.

Thus is another scientific discovery, which promised to revolutionize industry, knocked into a cocked hat by rude and passionate opposition. No longer can the world congratulate itself that two tons of coal can be obtained by leaving one ton exposed to a heavy fog.

And to think that the visible coal supply might have continued to be doubled by the inexpensive pro-

cess of leaving it out over night if Miss Lena Caduff had only been a year older when she met the susceptible Mr. Power! [2049—1981]

Coal Profit Loss Mourned.

Western Fuel Report Tells of Heartache When  
“Double Rate” Isn’t Secured.

The Western Fuel Company conspiracy charge trial in the United States District Court was enlivened yesterday by the statement, quoted from President John L. Howard in his annual report of December, 1906, that the fire created “heartache” in the firm because the temporary shortage of coal, caused by the demoralized conditions at the port of San Francisco, prevented that firm charging “double the rates” to consumers, who would have been glad to have secured fuel at those exorbitant charges.

Secretary David C. Norcross of the Western Fuel Company identified the records of the company introduced as evidence. In the annual statement made by President John L. Howard to the Western Fuel Company directors on December 31, 1906, the year of the fire, appears this statement, according to Secretary Norcross:

Output is Compared.

“A mine output of 1,500 tons per day which, at other periods, was comfortable, became at once *quiet* inadequate, and the steamship trade, which ordinarily would have been welcome, caused temporary heartache, because it diverted coal from customers who would have paid us double the rates per ton.”

Hugh G. Edwards, United States customs inspector at Seattle, testified that average cars of five tons



of coal weighed only from five to ten pounds per car overweight.

David G. Powers, brother of Edwin A. Powers, and one of the most important witnesses in the present Western Fuel Company conspiracy case, appeared before Police Judge Crist yesterday to answer to the statutory charge on which he was arrested the day before on complaint of Lena Caduff. The lawyers for the prosecution, Bradley Wallace and Jerome Politzer, made no appearance neither did the complaining witnesses.

#### Asks Lower Bonds.

Edward I. Berry, connected with the law firm of Sullivan, Sullivan & Roche, asked that the bonds be reduced from \$5,000 to \$2,000 for the reason that Powers was an important witness for the government in the Western Fuel cases.

Judge Crist reduced the bond, which had been furnished by Matt I Sullivan and Theodore Roche, special prosecutors for the government in the coal frauds trial. Powers was released and the case was continued until December 24. [2050—1982]

[Newspaper Clipping from] "**Examiner**," December 19, 1913.

#### NORCROSS TELLS OF BIG PROFITS.

Western Fuel Co.'s Secretary Says it Made a Million Dollars in Last Nine Years.

That one million dollars' profit, in monthly installments of 2½ per cent, were made by the Western Fuel Company in the last nine years was the statement made by Secretary David C. Norcross yesterday in the trial of the eight indicted coal



officials for conspiracy before Judge Dooling in the United States District Court.

In 1912, Norcross testified, the dividends increased to 17 per cent.

Norcross found difficulty in remembering the names of the members of the Western Fuel Company's executive committee, which handled the intimate details of the corporation's profit-making.

Norcross admitted that there was such a body, and named Robert Bruce, one of the indicted directors, as one of its members. Bruce is a vestryman in Trinity Church. His son-in-law, the Rev Clifton Macon of Oakland, was in court watching the proceedings.

It is expected that the Powers brothers, Edwin and David, the star witnesses for the prosecution, will take the stand to-day. Possibly they will be preceded by Special Treasury Agent W. H. Tidwell. The next man scheduled to take the stand is William Bunker, former chief engineer on the Pacific Mail's liner Manchuria, who will tell how the coal company repeatedly short-loaded that vessel when he was in charge. [2051—1983]

[Newspaper Clipping from] "**Examiner,**" December 20, 1913.

#### RAPS WESTERN FUEL LAWYERS.

Persistent Attempts to Get Statements on Shortages  
Call for Court Sarcasm.

Persistent attempts on the part of the lawyers for the defense in the Western Fuel Company conspiracy trial yesterday to get into the record some admission from Special Prosecutor Roche and from

Special Treasury Agent W. H. Tidwell, on the witness stand, that the shortages in coal shipments for six years amounted to only nine-tenths of 1 per cent, caused Federal Judge Dooling to rebuke the attorneys.

"If counsel insists on repeating this statement," said he, "the court will appoint one lawyer to do the repeating."

This shaft of sarcasm came after the attorneys on opposing sides had indulged in a sharp exchange over Tidwell's testimony, the defense insisting that he talk in terms of percentages while the prosecution contended that the figures were eloquent enough.

Tidwell's testimony came late in the afternoon and consisted of a resume of his work in investigating the alleged coal frauds, in tabulating the amount of coal received and disposed of between April, 1906, and December, 1912.

Secretary David C. Norcross of the Western Fuel Company concluded his testimony, the final tilt over him being marked by Prosecutor Roche's jeer at the defense that the coal concern, in the course of its activities, had "charged for the storage of water" in a shipment of smelting coal from the Cumberland Coal Company. This was a fling at the argument of the defense that the moisture content of coal caused large fluctuations in its tonnage. [2052—1984]

[Newspaper Clipping from] "**Examiner**," December 23, 1913.

SHORT WEIGHTS DUE TO HASTE.

Coal Handled Too Fast to Avoid Mistakes, Is Plea of Defense.

That the world moves too fast to get exact weight on coal shipments was the principal fact which the defense vainly strove to establish yesterday on testimony taken at the trial of the eight indicted officials of the Western Fuel Company for alleged customs frauds now being heard before Federal Judge Dooling.

Daniel J. Moynahan, for eighteen years an assistant weigher for the United States Customs Service, was introduced as a witness by the prosecution, but grasping his statement, Stanley Moore, counsel for the defense, worked hard to extract from the witness an admission that the weighing was necessarily done in such a slipshod manner, on account of press of work, that large discrepancies in the weights were inevitable.

Precise Weights Impossible.

"It was impossible to get precisely an exact weight," interjected Attorney Peter F. Dunne for the defense. "The world moves and it has to do business with dispatch."

In the afternoon another attempt was made to prove that speed made exact weights impossible when W. J. Dougherty, government weigher, took the stand. Dougherty was cross-examined by Moore at great length.

Dougherty testified that when the coal was weighed at the Folsom Street wharf he usually sat over the scales and kept count on the coal. There was rarely any mistake, Dougherty stated, and the coal on the cars would not vary twenty pounds either way on the scales. In connection with Moynahan's morning statements, Dougherty pointed out that the bar that showed the weight rose on the scale just two and three-eighths inches, and that in weighing 2,200 pounds the scales were always correct within ten pounds.

#### Treasury Agent Testifies.

W. J. Tidwell, special agent of the Treasury Department, introduced, by the prosecution, was another witness. Tidwell identified several exhibits prepared by his staff of Treasury agents, showing the sales made in the time covered by the case. His figures showed that 2,196,215 tons and 1,847 pounds were disposed of. This meant an "average" of 62,000 tons—the amount of coal sold over the amount actually received by the company, as disclosed by its own records.

Theodore Roche, special Government prosecutor, yesterday said that it would take until January 15 before all the Government's evidence could be presented to the jury. [2053—1985]

[Newspaper Clipping from] "Examiner," December 24, 1913.

724 TONS GREW INTO 1,244 TONS.

Special Agent Testifies That the Western Fuel  
Mulcted Government in Coal Deals.

William J. Tidwell, special agent of the Treasury



Department, occupied the witness stand all day yesterday at the trial of the eight indicted officials of the Western Fuel Company for alleged customs frauds.

The entire afternoon was taken up by Theodore Roche, special prosecutor, in examining Tidwell on tables he had made from the company's books to illustrate how it benefited by the so-called overages on coal shipments from British Columbia, the overages being the difference between the invoice and the out-turned weight of the shipments.

Specimen cases illustrated included the overage of coal on the barge Comanche October 11, 1911. According to the records of the company, 724 tons of coal were put aboard the Comanche and 1,244 tons were represented as taken off, making an overage of 419 tons, 117 pounds, or 70 per cent upon which drawbacks were paid by the Government.

Considering the fact that these drawbacks amounted to 40 cents a ton for coal put aboard vessels of American register, the Government, according to the prosecution, was mulcted out of thousands of dollars that should have gone into the treasury.

Agent Tidwell quoted other instances of these overages, which went all the way from 6 to 70 per cent of the different shipments handled by the company.

Judge Maurice Dooling announced that the trial would be continued until Monday, January 5.  
[2054—1986]

[Newspaper Clipping from] "Examiner," January  
6, 1914,

COAL BARONS GENEROUS TO LINER'S MEN.  
Western Fuel Gave Cash and Goods to Pacific Mail  
Men Each Christmas, Says Witness.  
\$50 Was Annual Present.

Marine Superintendent for the Steamship Company  
Tells of Shortage Found on Vessels.

The Western Fuel Company, whose officers and employees are now on trial for conspiring to defraud the United States Government out of customs duties and "drawbacks" from those duties, played Santa Claus regularly each Christmas since 1908 to a large number of men in the employ of the Pacific Mail Steamship Company, according to testimony brought from the examination of William Chisholm, marine superintendent for the steamship company, yesterday in the resumption of the case before United States District Judge Maurice T. Dooling.

The "donation account" of the Western Fuel Company, according to Chisholm, included the late Captain Anderson, captain of the watchmen of the Pacific Mail; Captain T. D. E. Wilson, formerly chief stevedore of the Pacific Mail; P. F. McCarthy, treasurer of the Pacific Mail; Stenographer Blake of the office of Chisholm in the Pacific Mail; Chief Engineer Allen of the "Asia"; B. A. Harnett, assistant manager of the Toyo Kisen Kaisha; J. W. Hauxhurst, engineer of the "Asia"; J. J. Creighton, boss stevedore of the Toyo Kisen Kaisha, and Harry O'Dea.

Get Cash and Coal.

Chisholm admitted that, so far as his own relations

were concerned, he regularly received \$50 every Christmas, and in addition all the coal he needed for his own family throughout the year—an amount of fuel which ran from one to several tons every twelve-month. Chisholm admitted that the indictment of the Western Fuel officials did not in the last disturb his holiday gift, the coal company giving him his annual \$50 last Christmas.

Frederick C. Mills, superintendent of the Western Fuel Company and one of the eight men under indictment, was the man, according to Chisholm, who acted as Santa Claus and put his "O. K." on any requisition which the members of the donation list might want to present to the fuel concern.

Chisholm was interrogated in regard to reports which reached him concerning shortages of coal on the Pacific Mail's ocean liners. He admitted that J. S. Hamilton, engineer of the steamship *Siberia*, had made a report of the coal consumption on one voyage, where the log showed 168 tons as the daily fuel, but, according to the report, it was necessary to tack on seven tons extra, because "100 tons of rain water" had been charged to the Pacific Mail Company on his vessel's consignment of coal.

#### Lawyers Object to Reply.

"As marine superintendent of the Pacific Mail," inquired Special Prosecutor Theodore J. Roche, "you would not see that company charged with 100 tons of rain water, would you?"

The lawyers for the defense objected to the question and fought hard to keep Chisholm from answering it. In the end, "Big Bill" answered the ques-



tion, explaining that the case was "referred to the general manager."

Roche again stirred the lawyers for the defense when he asked Chisholm why, after a formal report on coal shortages had been rendered him in 1908, he had waited until 1911 before making any personal investigation into the methods of handling the coal from bunker to barge.

At this stage of the investigation Chisholm identified the letter which Chief Engineer W. L. Bunker, of the *Manchuria*, sent him, complaining of the shortage of coal on his ship. Chisholm explained that, on this particular voyage of the *Manchuria*, the ship had made an extraordinary record in low coal consumption.

#### Indirect Reports Shortage.

Asked if he had received other reports of coal shortages, Chisholm had answered that he had received "indirect" reports—or, rather, "insinuations," to that effect.

"David G. Powers," said Chisholm, "came to me after he was released from the Alameda county jail" (and Chisholm repeated the assertion that the chief witness for the Government had served a term in jail) "and he wanted to have me put both himself and his father on the coaling job for the Pacific Mail, claiming that they could save much money for the company. When I put a direct question to him he merely shrugged his shoulders and walked away.

"In the spring," continued Chisholm, "Eddie Powers asked me to put his father back to trimming coal, saying the same thing—that he could save



money for the company.”

Edwin Powers, asked later concerning this statement, denied that he had ever approached Chisholm on such a proposition. Edwin Powers is one of the witnesses who is said to have a wealth of damaging evidence against the Western Fuel Company.

The hearing yesterday concluded with a tedious introduction into the court record of a mass of data—figures covering coal shipments, duty payments, “drawbacks,” and other matters, furnished by David C. Norcross, secretary of the Western Fuel Company, and Special Treasury Agent W. H. Tidwell.  
[2055—1987]

[Newspaper Clipping from] “**Examiner**,” January 7, 1914.

**‘EXCESS’ COAL PROFIT LARGE.**

Special Agent Gives \$500,000 as Difference Between Tonnage Declared and Sold.

In the trial of the eight Western Fuel Company officials yesterday, Special Agent W. H. Tidwell resumed his testimony under the examination of Special Prosecutor Theodore Roche. Tidwell testified that the profits of the coal corporation between 1904 and 1912 were \$500,000 from excess tonnage alone. He further explained that excess tonnage is the difference between that coal on which duty is paid and the coal sold from the coal yards and bunkers.

Tidwell was cross-examined at great length by Attorney Edward J. McCutchen. He testified he first instituted the investigation of the Western Fuel

Company in 1912. He denied he had ever informed Secretary D. C. Norcross of the Western Fuel Company that the investigation on the part of the Government would show that the coal shortage did not exceed 50,000 tons.

He stated that he had ordered that the Western Fuel Company officials should no longer have access to any of the government records at the Customs House after he had been denied the opportunity of further looking at the books of the coal corporation.

The trial will be resumed this morning when it is expected David Powers, a former employee of the Western Fuel Company and later a special agent in the employ of the government, will take the stand.  
[2056—1988]

[Newspaper Clipping from] "Examiner," January 8, 1914.

FREE COAL LIST IS LIKE SANTA'S  
Donations of Fuel Made to Many Employees of Concerns That Were Patrons.

The Western Fuel Company had a long list of influential Government and other officials who received free coal, according to testimony given at the trial of the eight indicted officers of the company yesterday.

Prosecutor Roche produced the list, which included army, customs and steamship company employees in high positions.

He declared that this free coal list was maintained to keep the recipients knowingly winking at the frauds that are alleged to have been perpetrated in wholesale form by the company.

### Had Free Coal Bills.

Here are some of the beneficiaries on the list:

Major Grant, U. S. A., connected with the army transport service; \$30 worth of coal in 1911; \$24 worth in 1912.

E. Farmer, former clerk to Collector Stratton, \$8 worth of coal in 1907.

J. Twigg, government weigher; \$9.50 worth of coal in 1912 and \$4.75 worth in 1913.

H. Freund and D. Finnegan, government weighers.

W. Chisholm, marine superintendent of Pacific Mail Company.

J. W. Hauxhurst, formerly marine superintendent.

P. H. McCarthy, employee in Pacific Mail treasurer's office.

Captain Wilson, formerly with Pacific Mail Company.

J. Crichton and B. A. Harnett, employess of the Toyo Kisen Kaisha.

This list is believed not to be the complete one, which includes the names of several prominent army officers who have had no coal bills to pay. Special Treasury Agent Tidwell, who prepared the list, refused to confirm or deny this feature.

### Payments of 21½ Cents a Ton.

The prosecution made a desperate but apparently unsuccessful effort to introduce into the record vouchers from engineers of the Toyo Kisen Kaisha, who, it is alleged, received regular payments of 21½ cents a ton for all coal received from the Western Fuel and, according to the Government, short-

weighted regularly by the large men conniving with the steamship employees.

Judge Dooling listened to lengthy arguments on both sides and heard the citing of decisions, the prosecution arguing that, while the payments to Japanese ship engineers had no direct bearing on the case, as set forth in the indictments, they were illuminating as showing the scope of what Roche repeatedly referred to as a "gigantic conspiracy" not only against Uncle Sam but against the two big steamship concerns. Judge Dooling did not appear convinced, although he withheld his decision until this morning.

#### Riddle Tidwell's Figures.

Agent Tidwell was on the stand all day, the defense taking deep delight in riddling his figures with corrections, making him admit that he had erroneously drawn percentages of averages because of insufficient data.

"In not one single instance in the table prepared as a government exhibit," said Attorney E. J. McCutchen, "has the percentage of overrun been correctly computed."

Tidwell readily altered his original figures when the errors were pointed out, but he explained that the fault rested with Superintendent Frederick C. Mills of the coal company, whose records themselves were faulty. [2057—1989]



[Newspaper Clipping from] "Examiner," January  
9, 1914.

# COAL FRAUD STORY TOLD BY WEIGHER.

Western Fuel Employee Reveals System by Which  
Steamship Companies Were Swindled.

Says Officials "Stood In."

David Powers Testifies That When He Warned  
Shipping Men, Was Told to 'Shut Up' and  
Get Busy.

David G. Powers, formerly employed by the Western Fuel Company and the Pacific Mail Steamship Company, and more recently a special agent in the employ of the United States Treasury Department, testified against the Western Fuel Company yesterday, during the trial of its eight indicted officers and employees before United States District Judge Dooling.

Powers singled out E. H. Mayer, weigher for the company, whom he accused of repeatedly having boasted of "robbing the lime-juicers."

He declared that in his experience as an employee of the company he had caught Mayer deliberately manipulating the weights on the scales so that they worked to the benefit of the fuel concern and against the ships which took coal from that corporation.

Urged to be Dishonest.

When employed by the Pacific Mail Company as a weigher, at the request of Superintendent Frederick C. Mills of the coal concern, he said that he was advised by Mills to "give the Western Fuel the best of it."

"I soon found," said Powers, "that the Western Fuel was robbing the Pacific Mail, just as it had robbed the other steamship companies. I went to William Chisholm, marine superintendent of the Pacific Mail, under whom I worked, and I told him that his company was being robbed. Chisholm tapped me on the back and said: 'You're getting paid, aren't you? Go back, sit down and say nothing'.

"Afterward I went to Robert Donaldson, assistant marine superintendent, and told him that the company was 'getting the worst of it.' He told me to 'shut up.' "

U. S. Weighers Dainty.

Asked to explain how all these things escaped the Federal weighers, paid to see that proper weights were fixed for the coal shipments, he said that in order to avoid coal dust, the United States officials spent most of their time "smoking in the cabin or the engine room."

The Government introduced evidence of the so-called "donation account" of the Western Fuel Company, it being shown, through vouchers, that the commandant of the Mare Island Navy Yard had received \$100 at one time and \$50 at another.

Attorney E. J. McCutchen, for the defense, introduced correspondence later, however, which identified these payments as special deposits, made to cover the cost of work in a contract for hauling coal to Mare Island.

"It is outrageous," said McCutchen, "to have counsel for the Government recklessly spattering

mud on reputations and doing such gross injustice to officers of the navy." [2058—1990]

[Newspaper Clipping from] "Examiner," January 10, 1914.

# SCHWERIN IS BROUGHT INTO COAL CO. CASE.

Powers Says Pacific Mail Manager Received Money from Vice-President of Coal Concern.

R. P. Schwerin, Vice-president and general manager of the Pacific Mail Company, was charged yesterday by David G. Powers in the trial of the eight indicted Western Fuel Company directors and employees in the United States District Court with having received from James B. Smith, vice-president of the coal concern, certain payments of money at a time when, it is alleged, the fuel company was desirous of keeping coal shortages on oceanic liners a secret.

"In conversations which I had with Edward J. Smith, weigher for the coal company and brother of Jim Smith," said Powers, "asking him how the Pacific Mail Company stood for the discrepancies in the coal loaded on the company's ships, he told me that Jim and Schwerin were very friendly and that Jim gave Schwerin large checks."

Prosecutor Roche when asked later about this feature of Powers' testimony refused to affirm or deny the report that the Federal Grand Jury was even now seeking to obtain evidence which would show that Schwerin and other Pacific Mail Company officials connived with the Western Fuel Company to defraud not only the steamship company but also the United States Government.

“I will say, however,” said Roche, “that in conversations with Secretary David C. Norcross of the Western Fuel Company I was informed that at least some of the payments to Schwerin from the coal concern were in the nature of contributions to a good roads fund in which Schwerin was interested.”

Schwerin declared last night that he had never received a dollar from any Western Fuel official. He said:

“In 1905, when I was interested in building the Crystal Springs boulevard as one of the committee of the Automobile Club of California, I believe the Western Fuel Company contributed \$100. *Western Fuel Company.*”

Heralded as the Government's star witness in the trial, Powers went yesterday into the hands of the enemy and was given a gruelling cross-examination by Attorney Stanley Moore for the defense.

Powers was questioned about his alleged “understanding” with the Federal officials and United States Special Treasury Agent W. H. Tidwell in particular, that a percentage of fines or penalties or recoveries in a civil action from the Western Fuel Company for its alleged fraudulent coal weights would be paid him for his services in furnishing evidence against the coal barons. [2059—1991]

[Newspaper Clipping from] “*Examiner*,” January 13, 1914.

POWERS ADMITS TALK OF ‘REWARD.’  
Weeping, U. S. Star Witness Changes Testimony in  
Western Fuel Conspiracy Trial.

David G. Powers, the Government's star witness in



the Western Fuel conspiracy trial, opened proceedings yesterday by asking and getting permission from Judge Dooling to change his testimony in regard to his knowledge of rewards, alleged to have been offered him by the Government for his assistance in furnishing evidence against the coal barons, now under indictment.

Last week Powers suffered a lapse of memory in regard to what he had been told by Special Treasury Agent W. H. Tidwell concerning an arrangement, by which he could profit by his testimony. At that time he "couldn't remember." He had refreshed his memory during the Saturday and Sunday recess, and yesterday he admitted at least one conversation with Tidwell and that he had discussed the prospect of a reward with several of his friends and relatives.

#### *Defense is Pleased.*

It was just this alteration of testimony which particularly pleased the defense, as Powers' recollection on this matter had changed last Friday between the morning and afternoon sessions of court, and the ground had been laid for his impeachment as a credible witness.

The lawyers for the defense, when they concluded their long and wearying cross-examination of this witness, expressed themselves as well pleased with their work.

Powers, during the gruelling quizzing, had repeatedly broken down on the witness-stand, weeping when forced to tell the details of his arrest for opium smuggling, his imprisonment in the Alameda county jail, his marriage while incarcerated there and his

later separation from his wife.

The lawyers for the defendants contend that they have proved that this "star witness" for the prosecution has been compelled to acknowledge bias and bitterness toward some of the indicted Western Fuel men. They say, also, that he has admitted a further incentive for his testimony, the reward being variously estimated at from \$7,000 to \$40,000, and even \$50,000.

### Conspiracy is Alleged.

The defense does not conceal its purpose to show, largely through Powers' testimony under cross-examination, that there was a "conspiracy" to bring about the downfall of the coal company men now under trial.

The closing moments of Powers' long stay on the witness-stand were marked last evening by sharp passages between opposing counsel, special Prosecutor Roche being accused by the defense of asking questions "unworthy of a Government attorney."

To-day a new factor will enter the case, Edwin Powers, brother of David G. Powers, and a former Western Fuel employee who enjoyed unusual confidences in the corporation, being assistant superintendent under Frederick C. Mills, one of the indicted eight, and being in close relationship with James B. Smith, vice-president of the corporation, also under indictment. [2060—1992]

[Newspaper Clipping from] "Examiner," January  
14, 1914.

### ERRORS HELPED WESTERN FUEL.

Former Employee Tells How the Cargoes Shrunk  
and Then Swelled.

Testimony against the Western Fuel Company was introduced yesterday in the trial of the eight coal barons and their employees indicted for conspiracy to defraud the United States, the particular evidence being the record of shortages and overages which occurred in the loading and unloading of the company's store ship *Algoa* in 1908.

Edwin Powers, brother of David G. Powers and formerly assistant superintendent of the fuel company, testifying reluctantly, admitted that the coal cargo on the *Algoa*, which was loaded from northern cargoes, grew and heaped up and swelled as though some wonderful leaven had been hidden in it.

The *Algoa* was loaded from the *Indra* and *Thyra* in January and February, 1908. She received 8,418 tons 2,113 pounds, which was 338 tons 997 pounds less than the respective bills of lading of the two boats.

These ships had come to this port from British Columbia with Nanaimo coal and had taken several days to travel from the north. The defense has contended that coal picked up moisture after its trip from the north and after it stayed in this port for any appreciable time.

Coal Gains, Although Dries.

The *Algoa* lay in the stream off Mission street for

eighteen months, and, finally, fire in the hold necessitated the unloading of its cargo. Barges of the Western Fuel Company were hauled alongside the ship and the coal was discharged into them. No government weighers were on hand, this being merely a private matter on the part of the coal concern. The result was that the coal despite the drying out of the cargo as a result of the fire, showed a gain of 116 tons 784 pounds, the total discharge being 8,535 tons 657 pounds as against the 8,418 tons 2,113 pounds placed on board originally.

Later these barges, when they finally discharged their coal on ocean vessels, all showed overages, testified Powers. Every barge reported that it gave up more coal than it received. One barge showed an overage of 106 tons 809 pounds; another barge showed an overage of 62 tons 1,372 pounds.

Thus, as Prosecutor Roche pointed out yesterday, one cargo alone showed three discrepancies, all in the Western Fuel Company's favor. Roche considers this one case as a remarkable refutation of the defense's contention that these shortages and overages, claimed by the government, can be easily explained through natural causes or through any single system of weighing.

#### Throw Onus on U. S.

In regard to the latter the defense, when it cautiously commenced the cross-examination of Edwin Powers yesterday, laid great stress on the fact that the coal concern's fuel was weighed under the supervision of government weighers, thus throwing the onus of any discrepancies on the Federal author-



ities themselves, one arm of the Federal government which is now prosecuting the coal officials.

Not until Edwin Powers took the stand was it even guessed just how he would comport himself, although his brother, David, had given damaging evidence against the fuel company officials. Edwin proved reluctant to testify against his former associates, but his very diffidence seemed to make an impression on the jury.

Powers admitted that he had taken complaints of short weights from steamship engineers to his superiors, Superintendent F. C. Mills, and Vice-president James B. Smith, both now on trial.

"How often would they complain?" he was asked.

"Whenever they'd catch me," was the answer.

[2061—1993]

[Newspaper Clipping from] "**Examiner**," January 15, 1914.

POWERS SAYS HE KNEW OF COAL  
FRAUDS.

Tells of Daily Overruns as High as 35 Per cent, and  
Says Bins Were Deliberately Overloaded.

"Wouldn't be an Informer."

Admissions Made on Cross-examination That Prosecution Was Unable to Get From Him on Stand.

Edwin Powers declared on the witness stand in the Western Fuel case yesterday that attempts had been made to persuade him to testify in favor of the indicted coal officials and that he had personal cognizance of frauds perpetrated in the weighing of coal.

Under direct examination by the prosecution Pow-

ers had not made these admissions. He made them yesterday after the defense had sought to impeach his testimony.

With the fact established through this admission that he had been partial to the defense, Powers went on to tell of the efforts of David Norcross, secretary of the corporation, to insure his loyalty, after the prosecution had failed to extract a promise of co-operation.

#### Binding Him to Defense.

“Special Treasury Agent Tidwell had one interview with me,” he said in answer to one of Attorney Stanley Moore’s questions. “He said the government would reward me if I helped the prosecution. I told him that neither he nor anybody could make an informer out of me.”

Telling of efforts to bind him to the defense, he said in further answers to questions:

“Norcross said to me, ‘We know you’re not against us. If not against us you must be for us. Come over to McCutchen’s office with me and talk over the barge overages.’

“Then he told me if the Grand Jury asked me what we were talking about to say that we were discussing generalities. He also spoke of what James B. Smith was going to do for me.”

Powers then told of going with Norcross to the offices of the attorneys for the defense, where the issues of the case were discussed.

“Not with a stenographer present,” said the witness, and the judge smilingly suggested the possible presence of a hidden dictagraph.

Powers admitted that he had told the lawyers for the defense that the "system" was partly responsible for these discrepancies in weights, but he would not admit that he attributed this as an excuse for all the juggled weights on the Western Fuel's barges.

Powers' Flat Denial.

Powers further denied flatly that he had stated to the lawyers that there had been "nothing wrong so far as the Western Fuel Company or its employees were concerned," adding that he couldn't have said that, "without lying."

Pressed as to why he had not told the attorneys for the defense all he had in his mind, Powers admitted that he had given an "answer to please them."

"You weren't sincere, then?" Moore shot at Powers.

"As sincere as you were," the witness flung back, "when you called me to your office at a time when you knew I was a government witness. You didn't bring me down there to tell you there was a fraud, did you?"

Powers went into the subject of frauds in coal weights with frankness. He said that the "daily reports to Superintendent F. C. Mills and Vice-president J. B. Smith showed overruns of 10, 20, 30 and even 35 per cent. Therefore, it showed conclusively that it was fraudulent, didn't it?" he added.

Powers stated that, besides the record in the books, he and Mills both saw the coal bins on the barges "deliberately and intentionally overloaded when they were selected for weighing."

"On the transport docks, not the Pacific Mail

docks," explained Powers further. "Mills told me to underload the tubs. When I told the stevedores to keep the tubs full and not to have trouble with the Government weighers," continued Powers, "I was saying it for effect, the weighers listening."

**"Gumshoe" Men's Ears.**

A chance remark from Powers, about gumshoe men overhearing what he had to say, stirred one of the sharpest exchanges since the trial began. Attorney E. J. McCutchen vehemently denied that the defense had any detective in court, and the prosecution, with equal warmth, denied that it had been necessary to retain sleuths. Powers was not pressed to point out in the courtroom the men he had in mind.

Secretary Norcross, whose name had been unpleasantly mentioned earlier in the day, was recalled to the stand late in the afternoon to identify and explain correspondence between the Nanaimo and the San Francisco offices of the Western Fuel Company respecting the discrepancies between the weights on bills of lading from British Columbia and the weights charged to the San Francisco office. [2062—1994]

[Newspaper Clipping from] **"Examiner,"** January 16, 1914.

**SECRET DUMPING HELPED FUEL CO.**  
**Reluctant Witness Tells How He Was Ordered to**  
**Discharge Unweighed Coal.**

Joseph Waterdoll, for some years motorman and dumper at the Western Fuel Company's bunkers at the foot of Folsom street, testified at the conspiracy trial yesterday, but only after he had been hunted for



weeks and had made an unsuccessful effort to escape from United States Secret Service agents, who tracked him to *him* home, routed him out of bed at 4 o'clock in the morning took him to the Postoffice building, kept him guarded there, and in the evening, took him to a hotel, carried his clothes away and locked the door from the outside.

Although Waterdoll admitted on the witness stand that he had "hidden out" after tearing up one subpoena, he told a story damaging to the defense, for it was he who took orders concerning the secret dumping of coal into the bunkers of the fuel concern.

E. H. Mayer, the coal company's weigher on the bunkers, was named as the man who had given Waterdoll orders to discharge coal from his cars into the bunkers before it had been weighed.

Waterdoll explained how a projecting beam would knock coal from the tops of the cars, how the faulty mechanism of the dumps would shoot tons of coal over the cars and down into the bunkers whenever a lump of coal blocked it, and how the company had removed the planking on the trestle under the cars so that the coal, spilled, would fall down into the company's bunkers, all without reaching the weigher.

"Cheese it, Joe," Waterdoll said Mayer cautioned him. "Look out for 'em. There's an inspector coming up the stairs."

Then, according to Waterdoll, the Western Fuel employees were particularly careful to see that no surplus coal fell by the wayside.

"If the customs officer caught the coal dropping

into the bunkers," explained Waterdoll, "he'd holler his head off."

Special Customs Agents John W. Smith and E. E. Enlow were also witnesses yesterday, corroborating, in the main, the testimony against the defense which David C. Powers had given earlier in the trial.  
[2063—1995]

[Newspaper Clipping from] "**Examiner**," January  
17, 1914.

PROBE FUEL CASE CHARGE OF COERCION.  
Judge Announces He'll Investigate Charge That  
Coal Prosecution Imprisoned Witness.

Inquiry Begins on Monday

Special Government Attorneys Deny Bringing Pres-  
sure and Demand Immediate Hearing.

Whether Joseph Waterdoll, formerly motorman on the Western Fuel Company's Bunkers and a strong witness for the prosecution, was forcibly held as a witness by Government agents and compelled, against his will, to give testimony damaging to the indicted coal officials, is a matter which Federal Judge Dooling announced yesterday he would investigate Monday afternoon at 4 o'clock.

The announcement of the court came at the conclusion of the day's session, and it surprised both sides, although the defense regarded it as a blow at the prosecution.

Believed Himself Arrested.

"It has come to the attention of the court," said Judge Dooling, "that in the case of Witness Waterdoll some restraint has been used to compel his at-

tendance on this court. And it has appeared from his testimony that it was his belief that he was under some form of arrest.

“The court has not desired at this time to undertake the investigation of collateral matters or to make comment on them, but if it is shown that this witness was held under restraint, without lawful authority and under the apparent sanction of this court, we propose later to find it out. The court desires at this time to state that it is not unobservant of the case.”

*Demand Immediate Inquiry.*

Special Prosecutor Theodore J. Roche was on his feet in an instant, demanding that the court's investigation proceed immediately, and Special Prosecutor Matt I. Sullivan seconded the request. It was learned that Waterdoll was not present in attendance on the court and, therefore, the investigation went over until next week.

The incident has stirred both sides in the now bitterly fought trial. The defense, speaking in the same strain as the prosecution, declared last night that “it was a shame” that the court had not ordered an investigation *instanter*. The prosecution as vehemently, declared that a thorough inquiry would absolve the Government of any blame in so far as the incarceration of any witness was concerned.

The prosecution contends that Waterdoll had adroitly avoided a summons, had torn up one subpoena, had tried to escape from his home, half clad, when two officers had called at his place at 4 o'clock in the morning, had fallen into their hands and had then surrendered and that, thereafter, he had ac-

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accompanied the Government agents willingly. Water-doll, according to the prosecution, had been drinking since his daughter's marriage during the Christmas season and had, therefore, been an unusually hard witness to corral.

#### Shortages Reported Often.

William L. Bunker, formerly chief engineer of the Pacific Mail liner Manchuria, was the chief witness yesterday, testifying that he had made repeated reports of shortages of coal on his ship to William Chisholm, marine superintendent of the steamship company. He particularly identified the letter of January 29, 1909, when he complained of a shortage of 123 tons on the voyage to the Orient.

Superintendent F. C. Mills of the Western Fuel Company, according to Bunker, had offered him a ton of coal for his own use at his home, but, said Bunker, he replied that Mills had "better put it into the ship." Nevertheless, said Bunker, coal was sent to his house from the Western Fuel Company with a receipted bill.

#### Coal not Weighed.

Samuel Griffin, formerly assistant motorman for the coal company, told of quantities of coal being dropped from the cars into the bunkers without being weighed—all under the direction of Weigher E. H. Mayer, now under indictment. During the car strike, said Griffin, when the customs weighers arrived at the bunkers late, the employees dumped whole carloads into the bunkers without taking them to the scales, cleaning out the bunkers before the Government men appeared.

Robert Sass, formerly an employee of the Western Fuel Company, gave positive testimony that coal tubs, weighed from the barges on which he had worked, had been not only loaded to full capacity but overloaded so that the customs men had ordered coal taken off, whereas tubs, not loaded for weighing, had been loaded "light."

Former United States Attorney John L. McNab created a stir in the courtroom in the afternoon by dropping in as an interested but silent spectator for the space of a few minutes.

"I didn't stay long," said McNab, "because somebody might say that I was interested." [2064—1996]

[Newspaper Clipping from] "Examiner," January 20, 1914.

SAYS WEIGHT OF COAL WAS DECIDED  
BY WINK.

Former Western Fuel Employee Tells of Methods.

Although nobody ever gave me explicit orders regarding the underloading of coal tubs on barges in the loading of fuel on barges, said James Ballestra, formerly a coal shoveler for the Western Fuel Company, witness to the trial of the eight indicted men in the coal concern yesterday, it was made plain, he declared, that only those tubs which were to be weighed by the United States Customs weighers were to be given full value.

"The Government weigher winked at us," said he, "when a weight was wanted during the course of the loading of a steamer. I never received a direct

order. That wink was enough for me and for the men working with me.

“When we overloaded tubs, which were not to be weighed,” he explained, “the hatch-tender for the Western Fuel Company threatened us with a loss of our jobs.

Similar testimony was given by D. Gensai, another former coal shoveler. [2065—1997]

[Newspaper Clipping from] “**Examiner**,” January 21, 1914.

#### KNOWS NOTHING OF COAL CASES.

R. P. Schwerin is Called as Witness by Federal Grand Jury.

R. P. Schwerin, vice-president and general manager of the Pacific Mail Steamship Company, was a witness yesterday before the Federal Grand Jury to explain how his company dealt with the Western Fuel Company at a time when, according to the Government prosecutors, the ship concern and the fuel people worked hand in hand to defraud Uncle Sam by a systematic short weighting, and over weighting of coal shipments.

Schwerin announced that he had nothing to tell concerning alleged coal frauds and that his corporation had no unlawful dealing with the fuel concern or with any of its officials or its employees.

The Government officials are seeking to prove a relationship between Schwerin and his employees and the Western Fuel Company and the probe started yesterday will be continued at the first opportunity.

In addition to Schwerin, the head of the Pacific Mail, the Federal Grand Jury yesterday examined



other officers of the steamship concern—W. S. Miller, chief weigher, and A. J. Thompson, purchasing agent.

Furthermore the Grand Jury catechised several men, accused of being “gum shoe” men in the employ of the fuel company’s defense. One man, who has been a constant attendant at the trial and one of the men who has been spoken of by different witnesses, “Skin-’em-alive” Kelly, was haled before the Grand Jury to explain his interest in the case. He made the explanation that he had been a “friend” of “Doc” (Edward J.) Smith for years and consequently desired to see how the evidence against him shaped up.

Meanwhile, at the trial of the eight indicted fuel company officials and employees the prosecution introduced as witnesses, J. F. Burns, a customs weigher, and Frank McKenna, a stevedore formerly employed by the Western Fuel. [2066—1998]

[Newspaper Clipping from] “**Examiner**,” January 22, 1914.

COAL WORTH \$1,358 GIVEN TO SCHWERIN.  
Pacific Mail Manager Warmed Home With Gifts of  
Western Fuel, Admits Sec. Norcross.

Company Paid U. S. Men.

Indicted Official Says “Overtime” Went to Customs  
Weighers Though Forbidden by Govt.

R. P. Schwerin, vice president and general manager of the Pacific Mail Company, received from the Western Fuel Company \$1,358 worth of coal for his own private use at his home in San Mateo during

the last six years and the fuel concern charged it all to "operating expenses," according to the testimony of David C. Norcross, secretary for the coal company, when he was recalled to the stand in the conspiracy trial yesterday in the United States District Court.

Norcross elucidated the items in the coal company's books—\$496 worth of fuel delivered to Schwerin from September 11, 1907, to March 17, 1909, and \$862 worth of coal from November 6, 1910, to June, 1913.

#### How the Bill Traveled.

The fuel company's secretary explained that orders for coal came from the Pacific Mail chief, that they were filed, that the bills were turned over to James B. Smith, indicted vice-president of the coal company, that Smith ordered the bookkeeper to credit the account paid and to charge the amount to "operating expenses."

Norcross added in his testimony that two other officers of the Pacific Mail enjoyed the use of free coal. A. J. Thompson, purchasing agent, and William Chisholm, marine superintendent.

Norcross also admitted that his company had paid United States government weighers for "overtime" during the discharge of coal cargoes, although a flat order from Washington forbade the practice. This payment has been frequently denied by the federal officials concerned.

#### Three Give Corroboration.

Corroboration of this point was obtained from Budd Hopkins, timekeeper for the Western Fuel Company, as well as from Colonel Charles H. Blinn,

acting deputy Collector of Customs, and Charles T. Cook, a veteran customs clerk.

Entries in the Western Fuel Company's books were introduced into the record yesterday to show that these payments to customs-house officers were recognized as illegal—the items being masked by "C. H. O." or "96." As much as \$240.50 was paid in this way for extra services in the last half of the year 1910.

The prosecution completed its case yesterday afternoon just at the hour of adjournment—4 o'clock. Because an important witness for the defense must come a considerable distance in order to give his testimony, Judge Dooling granted a recess for the jury until Monday morning at 10 o'clock. The court will be busy to-day, however, hearing the arguments which will be made by lawyers for the defendants, regarding the dismissal of the charges against the indicted men, the allegation being that no proof of a "conspiracy" to defraud the United States Government has been established. [2067—1999]

[Newspaper Clipping from] "**Examiner,**" January 23, 1914.

J. L. HOWARD OF WESTERN FUEL IS DEAD.  
President of Company Dies as Wire Comes to  
Dismiss Fraud Indictment Found Against Him.

Was Ill but a Few Hours.

Telegram Asking That Stain on His Name Be  
Removed Is Two Minutes Too Late.

TELEGRAMS IN HOWARD CASE.

TEXT OF WIRES EXCHANGED.

Here are the telegrams which were exchanged be-

tween the special prosecutors for the Government in the Western Fuel cases and the Attorney General yesterday in regard to the dismissal of the charge against John L. Howard, president of the coal concern, who was at that time on his deathbed:

San Francisco, January 22, 1914.

J. C. McReynolds,

Attorney General,

Washington, D. C.

Evidence for Government in Western Fuel case closed last evening. Motion to dismiss as against certain defendants will be made to-morrow. Defendant John L. Howard, president of company, who intended to make motion to dismiss, was stricken last night with apoplexy. He is reported to be unconscious and in dying condition. His attorneys have strongly urged us to consent to dismissal before death occurs. If this report is confirmed by a reputable physician selected by the Government, shall we *nolle pros* as to him? Please answer immediately.

SULLIVAN & ROCHE.

Washington, D. C., January 22.

Sullivan & Roche,

785 Market St.,

Humboldt Bank Bldg.,

San Francisco, Cal.

Your telegram of to-day asking whether under distressing conditions represented you should enter *nolle prosequi* against Howard is received. You may feel at liberty to take such action as, viewing all



circumstances, you may think is clearly in harmony with public interests.

J. C. McREYNOLDS,  
Attorney General.

John L. Howard, president of the Western Fuel Company, indicted and on trial for conspiracy to defraud the United States Government in the matter of duties on coal, died yesterday afternoon at his home, 87 Vernon avenue, Piedmont, less than twenty-four hours after Special Prosecutors Roach and Sullivan had completed the presentation of their case against him and his fellow-officials, and exactly two minutes before a telegram came from Attorney General McReynolds authorizing the dismissal of the charge against him.

With dramatic suddenness Howard collapsed at his home on Wednesday night on his return from the trial at which he had been a constant attendant ever since its inception on December 9.

A stroke of apoplexy was quickly followed by symptoms of paralysis. He sank into insensibility and never regained consciousness, the end coming at 3:18 o'clock after the attending physicians had vainly endeavored to strengthen the patient's rapidly weakening heart.

#### News Reaches the Court.

News of Howard's alarming condition did not reach Prosecutors Roche and Sullivan yesterday until 11 o'clock. At that time Attorneys Warren Olney and E. J. McCutchen communicated with the Government's counsel, urging their consent to a dis-

missal of the case in view of the imminence of their client's death.

A telegram was rushed to Washington, stating the facts and asking the Attorney General's consent to the entering of a "*nolle prosequi*" in the case in so far as it concerned the stricken defendant. In response to Sullivan and Roche's request for an immediate reply the Attorney General sent back an answer telling the special prosecutors that they were "at liberty to take such action as, viewing all the circumstances, they might think to be clearly in harmony with public interests."

It had been planned to hasten to court, call an emergency session and make the motion which would have wiped the stain from his name.

Dr. John Gallwey had been hurried to Oakland to make an investigation of Howard's condition, independent of the report made by the stricken man's own physicians, Dr. A. Liliencrantz of Oakland and Dr. Emile Schmoll of San Francisco. Dr. Gallwey arrived just as the end came.

This morning Judge Dooling in the United States District Court will hear the Government's special prosecutors make the motion to dismiss the charge against Howard—a motion which is now only a formality.

#### Pleas for Seven Others.

This morning, too, special counsel for the seven surviving defendants in the conspiracy trial will make motions asking the dismissal of the charge against all of the accused men. Should these be denied by Judge Dooling, separate motions will be

made in behalf of individual directors of the coal concern, Robert Bruce and Sidney V. Smith.

Howard's death removes one of the most notable figures in the business world on both sides of the bay. Besides being president of the Western Fuel Company, which he organized in 1902, taking over not only the Howard Company, but also the J. C. Wilson Company and the interests of John Rosenfelds, he was president of the Alameda Sugar Company, which he organized in 1888, and president of the Union Sugar Company, which he organized in 1896. He was also president of the Howard Company of Oakland, which did a large business in builders' supplies, and head of the Alameda Farms Company, owning a large amount of land in the Sacramento valley. He was a director of the Central National Bank of Oakland and a member of the Berkeley Club and the Pacific Union Club.

John L. Howard's fortune has been estimated at close to a million. The bulk of his wealth was made on this coast since he came here from Philadelphia in 1883 to handle the fuel business of the reorganized Oregon Improvement Company. He died in his sixty-fifth year.

#### Says Trial Caused Death.

"My father's death was directly due to the long worry and humiliation of the suit against him," said Sidney Howard. "He knew that the suit would be dismissed eventually, and the dismissal came at last, but it arrived too late. Word was sent to the house a few minutes after my father's death. It was the continued postponement of the dismissal of the suit

and the notoriety of the affair that killed him.”  
[2068—2000]

[Newspaper Clipping from] “**Examiner**,” January  
24, 1914.

### HOWARD’S CASE IS DISMISSED.

Counsel for Other Western Fuel Men Plead With  
Judge to Quash Indictments

The case against John L. Howard, former president of the Western Fuel Company, under indictment for defrauding the United States Government, was stricken from the records yesterday on motion of Special Prosecutor Matt I. Sullivan.

“That will be the order,” was Judge Dooling’s simple comment, and immediately counsel for the defense plunged into lengthy arguments, urging the dismissal of the indictments against all of the defendants and asking the court to instruct the jury on Monday morning next to return a verdict of “not guilty.”

Attorney E. J. McCutchen, senior counsel for the defense, made the opening speech.

“The Government has failed,” he said, “to prove its charge, outlined in the indictment, that these defendants combined and conspired to defraud the United States of import duties and drawbacks. The evidence adduced has been entirely insufficient.

“I am not authorized to speak in behalf of the defendant Edward J. Smith, with whom I have exchanged but half a dozen words, but I wish to say that one of the most cruel things in this case was the inclusion of this man in the list of indicted for no other reason *that* that, earlier in life, he committed



a fault, and paid the penalty.

“He was only a clerk for the coal company, copying figures given him by a Government weigher, and no proof has been produced by the Government that he had anything to do with the offenses alleged.”

Samuel Knight made a special plea in behalf of Edward J. Smith, James B. Smith, Frederick C. Mills and Edward H. Mayer, indicted employees of the Western Fuel Company. Concerning Edward J. Smith, former Tax Collector of the City and County of San Francisco, who several years ago served a term in San Quentin for embezzlement, he declared that his indictment was “an outrage.”

Peter F. Dunne, special counsel for Sidney V. Smith, another fuel company director under indictment, devoted the entire afternoon making an elaborate plea for his client’s acquittal.

Roche and Sullivan will be heard this afternoon.

Judge Dooling said yesterday that court would remain in session until all the arguments have been heard.

Several of the Western Fuel’s lawyers will attend the funeral of John E. Howard in Oakland this afternoon. [2069—2001]

[Newspaper Clipping from] "Examiner," January  
25, 1914.

LIBERTY FOR HIGHER-UPS IN WESTERN  
FUEL TRIAL.

Joseph L. Schmidt, Sidney V. Smith, Robert Bruce  
Given Freedom, Judge Holding That  
Evidence is not Sufficient.

James B. Smith, F. C. Mills and E. H. Mayer Must  
Still Face Federal Jury on Charges of Hav-  
ing Conspired to Defraud.

Judge's Order Comes While Those Concerned are  
Attending Funeral of Late John L. Howard,  
Who Was President of Company.

DEVELOPMENT IN COAL TRIAL.  
PRESENT STANDING OF CASE.

The Government's prosecution of Western Fuel  
Company officials and employees for conspiring to  
defraud the United States has broken up thus:

DEAD.

John L. Howard, president.

FREED BY THE COURT.

Sidney V. Smith, director.

Robert Bruce, director.

Joseph L. Schmidt, director and treasurer.

STILL HELD FOR TRIAL.

James B. Smith, vice-president and general manager.

F. C. Mills, superintendent.

E. H. Mayer, weigher.

E. J. Smith, checker.

While the indicted directors of the Western Fuel

Company were attending the funeral of the late John L. Howard, president of the coal concern, who had been removed by death from the trial now going on in the United States District Court, Federal Judge Dooling yesterday afternoon dismissed the cases against three "higher-ups"—Joseph L. Schmidt, treasurer and director of the company, and Sidney V. Smith and Robert Bruce, directors for many years.

Insufficient evidence against the three coal barons was the explanation offered by the court for this action.

James B. Smith, vice-president and general manager, F. C. Mills, superintendent, E. H. Mayer, weigher, and E. J. Smith, checker, must still face the jury and fight the Government's special prosecutors by furnishing evidence to offset the testimony pointing to their guilt as defrauders of the federal government.

Difficulty is no Excuse.

"The difficulty of getting evidence," remarked Judge Dooling [2070—2002] yesterday afternoon, in ruling from the bench after he had listened to special prosecutor Matt I Sullivan argue for an hour and a half opposing the motion of the lawyers for the defense, "is no excuse for not getting it.

"The Court has no doubt about the sufficiency of the evidence against James B. Smith, P. C. Mills, E. H. Mayer, and E. J. Smith, warranting their being held to make their defense.

"But, so far as Sidney V. Smith, Robert Bruce and Joseph L. Schmidt are concerned, the testimony

connecting them with any actual knowledge of the alleged criminal acts is extremely meager, if not lacking entirely. And while, if I may use an expression used by counsel, the 'higher ups' should not be excused on that account, they should not be convicted on that account, either.

#### Would Disregard Verdict.

"If a jury, on the testimony presented, should return a verdict finding these three men guilty of the offenses charged in this indictment, I should feel it the duty of the Court to set it aside."

The representatives of the defense who were in court at the time, Attorneys Peter F. Dunne, Samuel Knight, E. J. McCutchen and A. P. Black, received the Court's ruling with undisguised satisfaction.

The prosecution accepted the decision with the observation that, under the law, there was little else for the judge to do. Special Prosecutors Sullivan and Roche explained that, from the outset of their investigation, they had found it extremely difficult to find the evidence which they wanted.

"We have combed the books of the corporation for the last two months," they said, "and we have been unable to procure the evidence we wanted.

#### Says Evidence was Slight.

"We conceded that the evidence we presented against these three directors, just excused, was very slight, but in our opinion it pointed to guilty knowledge.

Special Prosecutor Sullivan dwelt at length in his speech yesterday on this point, for it was the real



bone of contention between plaintiff and defendants. It was Sullivan, who, harking back to the graft prosecution days, used the phrase, "higher ups," which was the catch-word quoted later by Judge Dooling.

"The 'higher ups,' " he declared with vehemence, "always remove themselves as far as possible from the chance of being caught in the toils. It is ever the underlings who commit the wrongs and run the chances—the men, who, working for nominal pay, do the bidding of their employers and carry out the schemes which make the 'higher ups' wax rich and lift their heads arrogantly in the social and business world."

#### Speaks Pitingly of Trio.

Sullivan spoke pityingly of the activities of Mayer and Mills and E. J. Smith in conniving to bring about the alleged overweights on coal barges and bunkers, and he commented scornfully on the charge made by lawyers for the defense that it was "awful cruel to indict E. J. Smith, who had once before paid the penalty to the law for a fault."

"James B. Smith, his brother and his employer," shouted Sullivan, "was the one who really committed a cruelty in putting him in a place where he had to commit an offense in order to hold his job and add to the brother's wealth."

"And James B. Smith," continued Sullivan, warming to the subject, "the man who had complete charge of the coal company's operations at this port, who employed all the help, who was in constant touch with every practical detail of the business and [2071—2003] who not only knew of the methods em-

ployed, but ordered frauds and even committed many of them himself—this man, in the opinion of the Government, is most guilty of all.

Is the Most Blameable.

“It was Smith who bribed the Pacific Mail officials and who was responsible for the corruption of Government weighers, too. It was Smith who bribed R. P. Schwerin with regular presents of coal—Schwerin, high in business and social circles and supposed to represent the stockholders of the big Pacific Mail Company and stand on guard to keep out the petty grafters who might be caught conniving at thefts from his own company.

“We never supposed that Schwerin would stoop so low as to accept a couple of tons a month *form* the company—coal which J. B. Smith charged to ‘operating expenses’—and then let these petty grafters remain in his employ.

“In my opinion,” remarked Sullivan, “these disclosures of money and coal payments to Pacific Mail people and to Government weighers was simply lifting one edge of the curtain.”

This was the special prosecutor’s only reference to what the Federal Grand Jury is now investigating. [2072—2004]

[Newspaper Clipping from] “**Examiner**,” January 27, 1914.

#### COAL EMPLOYEES DAB WHITEWASH.

All Give Themselves Clean Coat on Witness Stand at Western Fuel Trial.

“Anything I made was perfect,” asserted Blacksmith “Big Bill” Olinder, of the Western Fuel Com-

pany, testifying yesterday for the defense in the coal conspiracy trial in the United States District Court.

Olinder was talking about the new link, which he forged to replace the now famous "bent link" on the coal bunker cars, which the prosecution charges was responsible for many "crooked" weights in the delivery of coal on the waterfront.

Olinder said he had "never made a link which would give the company the best of it on the scales."

Clean certificates of good character were given themselves and their associates by Arthur Mullan, general foreman of the Western Fuel Company; Frank Wilson, hatch-tender; Andrew Rocca, hatch-tender, and A. J. Schultz, boss stevedore. They answered in the affirmative all questions put to them by Attorney Stanley Moore, and their combined testimony sounded like homilies on the ethics of coal shoveling and coal weighing.

#### Models of Integrity.

It appeared, from their testimony, that only one injunction was necessary in fifteen years to keep them in the straight path of rectitude. They kept the buckets full—but not too full; they passed the word accordingly to their subordinates; they never indulged in "winking" to suggest false weights, and they never received complaints from their superiors either about overages or about shortages. The work as Wilson, Rocca, Schultz et al. declared, was done perfectly.

Sidney V. Smith and Robert Bruce, Western Fuel directors, excused by Judge Dooling, dropped in to

lend their moral support to the remaining defendants, Vice-President James B. Smith, Superintendent F. C. Mills, Weigher E. H. Mayer and Checker E. J. Mills.

### Lawyers are Absent.

Not only was the complexion of the defendants' row changed; the lawyers' table was diminished. Attorneys Peter F. Dunne and Pringle were absent from the counsel's ring. These two had as their particular concern the salvation of the directors of the coal concern, and, now that this had been accomplished, they had departed, leaving the burden of the defense on the shoulders of Attorneys McCutcheon, Moore, Knight, and Olney.

Some time to-day, it is expected, the defense will spring its star witnesses, Thomas R. Stockett, superintendent of the coal company's mines at Nanaimo, B. C., and a horde of experts who will testify to the action of moisture and evaporation on the weights of coal. [2073—2005]

[Newspaper Clipping from] "**Examiner**," January 29, 1914.

### JURY WILL SEE BARGE LOADING.

Court Permits Inspection Trip To-day Against  
Protests of Prosecutors at Trial.

While coal barges are taking on coal of the Western Fuel Company this morning at the Folsom Street and Mission Street bunkers the twelve jurors selected to try the conspiracy case in the United States District Court will inspect the corporation's property.

Federal Judge Dooling made an order yesterday



sending the jury, the opposing counsel and the court officers on this junket, that the mysteries of the coal trust's manner of handling fuel may be made clear before the close of the present trial.

The special prosecutors for the Government, Sullivan and Roche, objected to the jury's inspection of the coal company's plant at any time when the actual operation of loading barges was in progress, it being their contention that the fuel concern naturally would see that coaling conditions were just as perfect as strict orders to its employees would guarantee.

Judge Dooling supported the defense in his ruling, asserting that the only object of the visit was to familiarize the jurors with the general methods employed on the bunkers, irrespective of any contention whether or not the coal cars and buckets were overloaded or underloaded.

#### Life Amid Miracles.

"We are not living in the day of miracles," protested Special Prosecutor Roche in objecting to the Court. "The probabilities are, then, that coal buckets will be evenly filled throughout the entire process, which, as the Court and jury must know, is contrary to the evidence introduced by the Government in this case."

"Yes," replied Judge Dooling, "but I will trust the jury to distinguish between what it sees and what the evidence proves to be in this case."

The prosecution extracted a promise from the other side that the planking could be ripped up on the bunkers and that other conditions could be shown, substantiating the claim of the Government that the

bunkers were so altered in the past that gigantic frauds were made possible.

### Alleged Threat by Powers.

The testimony, adduced by the defense in the proceedings yesterday, was given by Joseph H. Desmond and John Thomas Linehan, who emphasized a certain conversation, alleged to have been held between them and David G. Powers, one of the chief Government witnesses, in which Powers is said to have declared that he would "get J. B. (Smith) and that Jew, Mayer," two of the defendants in the case.

"Larry" Brennan, gateman at the Pacific Mail docks, corroborated the testimony given the day before by Policeman John Galloway, that David Powers had boasted that he was going to get close to \$50,000 for his work as an informer for the Government in the Western Fuel investigation. [2074—2006]

[Newspaper Clipping from] "**Examiner**," January 31, 1914.

### BREAK EVEN IN FUEL CASE ROWS.

Judge Rules Out Evidence Offered by Defense, Then Bars Letter from Prosecution.

Documents offered by prosecution and defense in the Western Fuel Company conspiracy trial yesterday were ruled out by Federal Judge Maurice T. Dooling, although the two sides fought vigorously to have their evidence presented to the jury.

The defense, through Thomas R. Stockett, general manager of the Nanaimo plant of the Western Fuel Company, sought to introduce a report, which had

been made about the moisture in the mines at Nanaimo by A. C. Fieldener, Government expert.

### Prosecution Opposes Report.

The prosecution refused to allow the admission of this evidence, arguing that the wetness of coal in the mines had nothing whatever to do with the question at issue—namely, the moisture and the evaporation of coal carried from Nanaimo to this port.

Attorney Warren Olney insisted that it was a material point, inasmuch as the defendants were being blamed for fraudulently weighing coal, when the dampness of the fuel was the real cause for the discrepancies in weights.

On the prosecution's contention that it had not been shown that the defendants had ever read and relied on the reports, Judge Dooling refused to admit the evidence.

### Misconduct, Declares Defense.

The Government lost the next important bout—an attempt to introduce into the record a letter purported to have been sent by General Manager James B. Smith, one of the defendants, to Stockett, in May, 1906—a message which Special Prosecutor Matt I. Sullivan declared threw a floodlight on the methods of the “coal trust,” but which the attorneys for the defense excitedly branded as immaterial, inconsequential, etc., and, on top of it all, “misconduct on the part of the prosecution.”

Sullivan resisted the charge, declaring that the mysterious letter bore directly on “the methods and practices of the company at Nanaimo” and, for that reason, should be admitted as evidence.

The jury was on the *qui vive*, expecting a new sensation, but the Court ruled the letter out—and it was refused admission as an exhibit.

Neither the prosecution nor the defense would discuss the letter, the prosecution fearing contempt, and the defense insisting that “it didn’t amount to anything, anyway.” [2075—2007]

[Newspaper Clipping from] “**Examiner**,” February 3, 1914.

**BIG DEFENSE GUN FIRED IN FUEL FIGHT.**  
Recognized Expert With Many Accomplishments,  
Put on Stand by Western Fuel Attorneys.

Strong Play on ‘Moisture.’

Prof. Parr to Explain How It Is Sopped Up in  
Transit of Coal From Mines, Increasing Weight.

Professor Samuel W. Parr, who occupies the chair of applied chemistry at the University of Illinois, coal inspector for the State institutions of Illinois, for nearly twenty years engaged in the study of coal, the recognized authority in America on the subject of coal and coal mining, is the big gun in the Western Fuel Company’s defense in the conspiracy trial now under way in the United States District Court.

Professor Parr formally made his advent in the case yesterday morning, although he has been on this coast, both here and at Nanaimo, for the last month.

The defense introduced Professor Parr with a flourish. It was brought out by Attorney Warren Olney Jr. that in addition to his official standing in Illinois the scientist had been a prolific writer on the subject of coal; that he had invented several devices



used by engineers in the handling of coal; that he had umpired several disputes between coal mine owners and operators; that he had examined and reported on half a thousand coal mines and that he had at the present time the important position of chairman of the committee for devising standard methods for coal inspection in the American Society for Testing Materials.

### Hopes of the Defense.

All this led up to the defense's contention that when the professor announced that coal sopped up moisture in transit from the northern mines to this port, the government's contention, that frauds in overages were perpetrated, would vanish into thin air.

Before Professor Parr was led into a discussion of his own observations on the variations of coal weights due to oxidation and moisture content, the defense made an ineffectual attempt to get him to read into the record lengthy excerpts from bulletins, issued by the United States Department of Mines and the Geological Survey. The prosecution objected, and the court sustained its contention.

"This," observed Judge Dooling, seems to be an attempt to prop up this witness' testimony by government publications. Finish the examination of the witness and then, if these pamphlets are admissible as evidence, introduce them."

### Defense Shows Persistence.

Despite this ruling the defense persisted in its attempt to get before the jury, through Professor Parr, the findings of the government scientists. Both sides

bombarded each other with judicial opinions, and, for a long time, Judge Dooling was busy passing on objections, stubbornly raised by the prosecution.

Even when Professor Parr began giving his own evidence his direct examination was blocked again by the prosecution, which insisted that his experience was largely with Eastern coals and that it had, therefore, little bearing on the problem of the Nanaimo product.

“The defense has a right to get from this witness general statements, covering the changes in coal,” said Judge Dooling. “If Nanaimo coal is exceptional it rests with the government to prove this.”

The decks cleared, the Illinois coal expert made the statement that low moisture bituminous coal, such as that received from outside sources by the Western Fuel Company, had as much as 2 per cent of water, while high moisture coal contained sometimes as much as 15 per cent of water. Exposure to the elements altered these figures.

#### Jury in Dark Maze.

Professor Parr had the jury well into the mazes of coal *exidation* and the increases in weight which followed when court adjourned until this morning.

A touch of comedy was injected in the morning when Edwin Parke, a Pacific Mail weight checker, took the stand to tell the jury that never, in his eleven years' experience with the Western Fuel Company, had he ever so much as heard of barge overages, although he did recollect that once or twice there had been some comment about shortages. Parke had heard only sporadic cases of complaints from his own

company's engineers about shortages in coal consignments. [2076—2008]

[Newspaper Clipping from] "**Examiner**," February 4, 1914.

## EXPERT ON COAL CANNOT EXPLAIN GAIN IN WEIGHT.

23 Per Cent Increase in Cargo Larger Than Possible  
From Moisture.

Tilts With Prosecutor.

Tells of Trip to Nanaimo to Study Question for  
Western Fuel Company.

Neither with oxidation nor with moisture absorption could Professor Samuel W. Parr of the University of Illinois, coal expert and the star witness for the Western Fuel defense in the conspiracy trial in the United States District Court, explain some of the "overages," which the Government called to his attention in the course of his cross-examination yesterday.

In four days, it was shown by the coal concern's own figures, a cargo on the barge Comanche increased 23 per cent. Oxidation, said Professor Parr, might have accounted for possibly one-quarter or one per cent, and as much as one and one-half per cent, but no more. Although this was in the latter part of May the coal expert said that humidity might have played a part in the swelling of this cargo, but he admitted that the saturation limit of coal, under the most extraordinary conditions, was eight or nine per cent.

"If oxidation will make coal increase in weight like

that," observed Special Prosecutor Matt I. Sullivan, "a dealer can get rich by just keeping his stock stored until it doubles its content."

Admonished by Judge.

Then the professor launched into an argument in defense of his theories and Federal Judge Dooling had to admonish him not to indulge in altercations with counsel. But the Illinois expert didn't like the special prosecutor's tone toward him, and, when asked about a comparison between ordinary weather conditions and conditions such as those in the court room, he could not forbear saying:

"Well, this is quite a warm courtroom in so far as temperature is concerned."

The prosecution asked the coal expert to explain other overages, how the barge Nanaimo, in seven days, showed an increase in the weight of its coal amounting to 321½ per cent; how the Ludlow showed in eighteen days an average of 24 per cent.

Professor Parr admitted that these remarkable increases in weight of coal were "beyond what could be expected even with the addition of water" from rain or hose, and even considering the percentage gained through the oxidation of sulphur, pyrites or carbonaceous material.

Gets \$25 Per Day.

Professor Parr in the course of his cross-examination admitted that he had been in the employ of the Western Fuel Company off and on since the latter part of August, when he went to Nanaimo to study coal conditions there. He said that he had accepted a fee of \$25 a day and expenses and he had devoted



about 100 days *is* assisting the coal defendants.

The professor was careful to point out that the terms of his retaining by the Western Fuel defense were that he should make his independent investigations and file a report, and that, afterwards, if anybody wanted to hire him, he would consider a proposition.

On the point of shortages—the decrease in the weight of coal in shipment in four days from Nanaimo to this port—the professor said that if shortages or overages occurred in such a short voyage they could not amount to more than  $\frac{1}{2}$  of 1 per cent at the utmost—but he couldn't tell which way the difference might jump. [2077—2009]

[Newspaper Clipping from] “**Examiner**,” February 5, 1914.

## JUDGE CALLS HALT IN FUEL TRIAL DELAY.

Stops “Frivolous” Examination of Coal Expert Parr and Declares Lawyers’ Bickering Must Cease.

Statistics Tickle Sullivan.

Professor’s Figures, if True, Would Put San Francisco Under 84 Feet of Water, He Says.

Federal Judge Dooling yesterday peremptorily ordered the end of the cross-examination of Professor Samuel W. Parr, the coal expert, who had been two days and a half on the witness-stand as the one big witness for the Western Coal Company in the trial that began December 9.

The lengthening of the trial beyond all expected

periods has brought about a psychological situation involving the patience of both judge and jury, and irritation at further delays will have an important bearing on the outcome of the case.

### Judge Scores Lawyers.

Judge Dooling tried repeatedly yesterday to make the opposing lawyers hurry up. Once, when Special Prosecutor Sullivan and Attorney E. J. McCutchen, for the defense, crossed swords in a spirited altercation, the court said:

“This bickering over the tables must cease. I hope I won’t have to resort to more drastic measures at the conclusion of this trial.”

Professor Parr had, under redirect examination yesterday, told the jury that rain-water, pouring into open coal bunkers at the average rate of two feet a year, would cause a swelling of two tons to every inch of moisture, or a matter of fifty tons a year in a bunker 800 square feet in area. Multiplied by the areas of the different bunkers, said Professor Parr, there would be 6,250 tons of water absorbed by the exposed coal in one year, or 43,750 tons of water in seven years (the period covered by the indictments against the coal concern officials).

### Sullivan Laughs at Figures.

Professor Parr made a deduction of one-fifth for ordinary evaporation of this immense quantity of water, leaving 35,000 tons of water still in the coal. Estimating the percentage on the basis of 2,000,000 tons, handled by the coal company, the professor deduced that the moisture increase in the total would be about 1.8 per cent.

Special Prosecutor Sullivan, on hearing these statistics, could not restrain his laughter. In high glee he went to a set of figures for his own information, and discovered to his consternation that rain water, absorbed by the city of San Francisco in the same manner as Western Fuel coal ate up moisture, would leave the metropolis to-day under 84 feet of water. The city would be completely submerged, with the exception of the tallest skyscrapers.

It was because Sullivan insisted on asking hypothetical questions, based on the professor's testimony, that the lawyers for the defense begged the court to stop the cross-examination "because it was ridiculous." Then Attorney Warren Olney himself offered a similar question in redirect examination, and Judge Dooling, glancing at the clock, said with a shrug of his shoulders, "Oh, nonsense," and court adjourned immediately.

Both sides last evening expressed perfect satisfaction at the result of Parr's testimony. Both claimed to have nailed potential facts into the record for the edification of the jury, and both looked forward gleefully to the testimony of the other coal experts, who will be put on the stand next. These are Professor E. E. Somermeier of the Ohio State University and Professor A. M. Folsom, associate professor of mining at the Stanford University. [2078—2010]

[Newspaper Clipping from] "**Examiner,**" February  
6, 1914.

**FOUR FUEL DEFENDANTS TO TESTIFY.**

J. B. Smith, E. J. Smith, E. H. Mayer and F. C. Mills  
to Contradict Charges by Government.

Prosecutors are Pleased.

President John Caspar Branner of Stanford Refutes  
Testimony of Professor S. W. Parr.

The four defendants remaining in the Western Fuel Company conspiracy trial will be placed on the witness stand by their lawyers to contradict by their own personal stories the evidence introduced by the Government against them.

The four are James B. Smith, vice-president and general manager of the coal concern; Edward J. Smith, weigher for the company and formerly tax collector of San Francisco, who served a term in the penitentiary for embezzlement; Edward H. Mayer, weigher for the corporation, and Frederick C. Mills, superintendent.

**Will Deny Charges.**

Attorney E. J. McCutchen, for the defense, stated last evening that the defendants would deny categorically the damaging statements made against them by David G. Powers and his brother, Edwin.

The special prosecutors for the Government, Sullivan and Roche, expressed themselves as pleased last night. The prosecutors say they expect no difficulty in puncturing their stories.

Attorney McCutchen stated last evening that the



defense expected to complete its case by next Tuesday evening. Professor A. M. Folsom of Stanford will take the stand to-day, and he will be followed later by a number of coal dealers and then will come the four defendants.

#### Will Recall Edwin Powers.

The prosecution expects to throw into the record a mass of evidence in rebuttal, and among the chief witnesses will be Edwin Powers, who has aligned himself with the prosecution since the defense made a determined effort to discount his testimony against the coal trust employees. It may be safe to predict that the jury will have the entire case in its hands by the end of next week.

The jury was entertained yesterday by college dons—President John Caspar Branner of Stanford University and Professor E. E. Sommermeier of Ohio State University. Much scientific language found its way into the already bulky court record.

#### Branner Aids Prosecution.

Dr. Branner, head of Stanford University, proved not such a good witness for the defense as he was expected to be. He denied what Professor S. W. Parr of Illinois University had declared to be true—that oxidation caused an instant, appreciable difference in the weight of coal, adding to its bulk. Dr. Branner said that oxidation took a long time and that its effect, in a commercial way, was negligible.

The point, clinched by the Government, was not only that coal coming to this port failed to gain weight but the more significant fact that these coal experts were not at all of the same opinion.

Professor Sommermeier proved such an interesting witness to the Government that he was kept on the stand, at the express order of the court, until all the information wanted had been extracted from him, the jury being kept long after the hour of adjournment for this one purpose.

Sommermeier, in the course of his testimony, startled the court by declaring that coal inspection methods at the Presidio were slipshod. [2079—2011]

[Newspaper Clipping from] "**Examiner**," February 8, 1914.

**BIG FORTUNE IS SPENT ON COAL CASES.**  
More Than \$200,000 Estimated Cost of Prosecution  
and Defense in Western Fuel.

Expensive Lawyers Hired.

Trial is Near Record for Length of Time, Having  
Already Occupied Thirty-two Days.

More than \$200,000 will be spent by both prosecution and defense in the Western Fuel Company conspiracy trial before the case is ended. The indicted men are spending at least \$150,000 in lawyer's fees, pay for experts, clerical and other work. The Government is paying Special Prosecutors Matt I. Sullivan and Theodore J. Roche a handsome fee to handle this, as well as the Diggs-Caminetti white slave case, and there has been a small army of men in the employ of Uncle Sam for many months, gathering and collating the evidence against the coal trust officials.

This \$200,000 is being spent in the bitter legal battle to decide whether or not the Western Fuel men

conspired to defraud the United States out of import duties on coal, "drawbacks" on that coal and fuel sold to army transports. The sum involved in these prosecutions is close to \$300,000, and, if a conviction is secured in this present case, the Government will lose no time in starting civil suits to collect this money, alleged to be due Uncle Sam.

### Has Record for Length.

Not in years has there been such a long-drawn case in the local Federal courts. The trial commenced on December 9 last, and the case has been constantly before Judge Maurice T. Dooling, with the exception of three weeks during the Christmas season, when a recess was taken on account of the holidays. Already the trial has consumed thirty-two court days, or the equivalent of six weeks. The one notable case, which took longer time than the Western Fuel case, was the trial of the Southern Pacific strike question in 1894, when Federal Judge W. W. Morrow held court seventy days.

An enormous record has been made in this Western Fuel trial. Already the court stenographers have filled 3,700 pages of transcript, or a total of 1,110,000 words, to which must yet be added the record in the closing days next week, and a matter of 100,000 words in tabulations. The stenographers' fees alone represent a comfortable sum of money.

### Roomful of Exhibits.

The exhibits which both prosecution and defense have filed make a good roomful. The Government dumped into the courtroom hundreds of books, obtained from the Western Fuel Company only after

the secretary of the corporation, David C. Norcross, had been sentenced with a term in jail and a fine for contempt of court in refusing to deliver them up. Special Treasury Agent W. H. Tidwell, who has prosecuted the technical side of the investigation, has furnished an enormous amount of figures, tables and statistics of all sorts, the result of his studies in the corporation's books.

The defense has been busy in the last few days piling up on the clerk's desk lengthy Government reports and the reports of experts and it has already met the Government's exhibits of photographs with a set of its own, taken on the waterfront properties of the fuel company.

Generally a trial in the United States District Court is devoid of picturesque features, but the Western Fuel case has been full of dramatic incidents—events which will cause it to be remembered for many years to come.

#### Starts With Eight on Trial.

The case started with eight defendants. When the prosecution had closed its side, John L. Howard, president of the fuel company and himself a defendant, collapsed and died within twenty-four hours—the prosecutors making a vain effort to reach Washington by wire and get permission to dismiss the case against him before the end came.

Two days later, while the Howard funeral was being held, Judge Dooling, on motion of the defense, dismissed the cases against the other “higher-ups.” Directors Sidney V. Smith, Joseph L. Schmidt and Robert Bruce, who were among the indicted. The



case has gone on as if nothing had happened, the fight growing sharper as the closing days of the trial draw nigh.

Two of the Government's witnesses have been made the special targets for the guns of the defense. They are the Powers brothers, "Dave" and "Eddie," the former for several months a special Treasury officer, the latter a very reluctant witness until the defense undertook to impeach his testimony, since which time he has been indefatigable in aiding the Government prosecutors in unearthing the evidence to corroborate his original story.

#### Charge Made by Girl.

David Powers, early in the trial, was suddenly arrested on a charge preferred against him by a young girl. That case has not yet been brought to trial, although the prosecution has demanded it and went so far as to call a special session of the Federal Grand Jury to inquire into the causes which led to the attack on him at that particular time, although the brilliant array of legal lights retained by the defense have denied that "gumshoe men" have been employed by them, the trial in the United States District Court has been remarkable for the presence of well-known private detectives and "strong-arm men."

The prosecution several weeks ago found itself in hot water because it was brought out in court that a certain witness, who had dodged a subpoena for many months, had been seized at his home, hustled to the Postoffice building and kept under lock and key in a nearby hotel until the time came to put him on the

stand. Judge Dooling made an investigation and still has the case under advisement. [2080—2012]

[Newspaper Clipping from] "**Examiner**," February 10, 1914.

### WESTERN FUEL CASE MUST END BY MONDAY.

Court Demands Speedy Finish of Long Drawn-out Proceedings.

Federal Judge Maurice T. Dooling has served formal notice on the attorneys engaged in trying the Western Fuel Company conspiracy case in the United States District Court that they must finish everything by next Monday evening. The court is frankly tired of the long drawn-out trial.

Acting on the suggestion, pointedly given by the judge, the lawyers on both sides held a conference at the noon recess yesterday and offered a faint ray of hope that the taking of testimony might be ended this week.

Judge Dooling has a criminal case on his calendar for next Tuesday. He said that, so far as he was concerned, he would work all day next Thursday (Lincoln's birthday) in order to accelerate the almost clogged wheels of justice.

Last evening Attorney E. J. McCutchen thought that Wednesday evening would see the close of the defense.

The prosecution may put on a number of witnesses for rebuttal and evening sessions in the Federal court may yet be necessary.

Yesterday's court proceedings were consumed in the examination of Professor A. M. Folsom of Stan-

ford University, who testified that he had been called into the case as an expert because Professor J. C. Branner, president of the university and head of the geology department, was away in Brazil last summer and it was necessary to retain Folsom as the acting head of that department.

It was Professor Branner who, when placed on the witness-stand last week, upset the statement of some of the famous Eastern coal experts (all professors), who were hired to testify for the fuel company.

Professor Folsom was followed by George S. Bohart, instructor in chemistry at Stanford, who told of coal analyses he had made for Folsom.

Two former coal merchants were examined—Henry Rosenfeld, whose firm sold its business to the Western Fuel Company in 1903, and H. C. Richards, a general broker, who represented big British coal concerns in this city between 1884 and 1904. These men testified in general terms concerning the occurrence of overages in shipments, handled by them in years past. [2081—2013]

[Newspaper Clipping from] “**Examiner**,” February 11, 1914.

#### HE EARNED THE MONEY.

The Western Fuel Company’s officials, on trial for swindling the Government by short-weighting coal to escape paying part of the duty, and by over-weighting coal sold to customers, largely rely upon the testimony of Professor Samuel W. Parr to acquit them.

Professor Parr is expected to testify that in the intervals between weighing the coal for Government

information and weighing it again to buyers, the accommodating fuel absorbed the difference in pounds from the atmosphere, taking both oxygen and moisture from that convenient reservoir.

In the course of Professor Parr's examination Tuesday it was brought out that the coal company has been paying him \$25 a day and expenses since last August.

Taking into consideration all the exigencies of the situation, we have no hesitation in admitting that the professor was cheap at the price. [2082—2014]

[Newspaper Clipping from] "**Examiner**," February 11, 1914.

#### FUEL MEN TAKE WITNESS-STAND.

Edward J. Smith and Edward H. Mayer Testify in Their Own Defense.

Two of the four remaining defendants in the Western Fuel Company conspiracy trial took the witness-stand in their own behalf yesterday in the United States District Court, Edward J. Smith and Edward H. Mayer, weight tally clerks for the coal concern, testifying that they had never engaged in a plot to defraud the Government out of duties or "draw-backs."

To-day it is expected that James B. Smith, vice-president and general manager of the company, and Frederick C. Mills, superintendent, will be put on the stand.

Edward J. Smith testified that he had nothing whatever to do with taking weights, that he took these figures from the Government weighers, that he



did not take his station on barges when transpacific vessels were being loaded with fuel and that he had never held any conversation with "Dave" Powers in regard to sending checks to R. P. Schwerin of the Pacific Mail Company.

The Government refused to cross-examine him.

Mayer was given a long siege, lasting all the afternoon. He and Special Prosecutor Matt I. Sullivan had repeated tilts in the course of his cross-examination, and Mayer had an uncomfortable time of it trying to explain that it was "only out of curiosity" that he asked the weights of screenings dumped into the barges—a process which he admitted was secret because the coal company did not like to have it generally known that this fine coal was mixed with lump coal.

Mayer's testimony concerning the payment of "overtime" to the Government weighers when they worked at night was the bone of contention between the opposing attorneys, but despite the vigorous objections of the lawyers for the defense, the story went into the record that the weighers for Uncle Sam were regularly paid for their extra work, that they never gave receipts, that their names were not entered in the books, but that they were represented by Mayer's own name, blanketing the entire crew.

[2083—2015]

[Newspaper Clipping from] "Examiner," February  
12, 1914.

POWERS' STORY IS CALLED FALSE.

Testimony of Two Brothers Denied by Their Former  
Superintendent.

Frederick C. Mills, superintendent of the Western Fuel Company and one of the eight men indicted originally for conspiring to defraud the United States out of duties and drawbacks on duties, took the witness-stand in the trial in the United States District Court yesterday and denied every charge made against him and the corporation.

The chief battle was over the testimony of the Powers brothers, Edwin and David—testimony which the defense is trying to impeach.

Mills denied the testimony of the brothers, that he ever had suggested or ordered any overloading of coal tubs at the bunkers on the waterfront.

Meaning of "*Overcharge*."

His most sensational denial was that the term "overage" meant "anything at all"—that it was just inaccurate bookkeeping. The term "shortage," he said, meant that a barge had been "cleaned up"—nothing more. Mills insisted that the method of handling the coal barges made it impossible for anybody to check up discrepancies in weights such as those claimed by the government.

William Chisholm, marine superintendent for the Pacific Mail Company, was recalled to upset Edwin Powers' story. The best that was obtained from him

was an admission that Edwin, since the opening of the Western Fuel trial, had held a conversation with him, in which Edwin told him that the coal concern people were "guilty," that the books showed it and that J. B. Smith and Mills knew it.

Lawyer on Stand.

Attorney Warren Olney, Jr., one of the lawyers for the defense, took the stand to contradict in many particulars the story told by Edwin Powers in regard to the conversation which he had early in the case with the counsel for the indicted coal barons.

W. H. Tidwell, special treasury agent, also was called by the defense in an endeavor to upset the story told by David G. Powers about his alleged negotiations to get a reward from the Government for his testimony. [2084—2016]

[Newspaper Clipping from] "**Examiner**," February 14, 1914.

END IS TENSE IN FUEL CASE TESTIMONY.  
Last Witness in Coal Trial is Heard While Lawyers  
Battle for Every Final Advantage.

James B. Smith on Stand.

Defendant Refuses to Let His Counsel Interpose  
Objections to the Government's Questions.

Testimony in the prolonged Western Fuel Company conspiracy trial in the United States District Court ended last evening at 7 o'clock, after a session which lasted for more than seven hours and concluded in a tense situation, with the lawyers on both sides fighting tempestuously for every final advantage.

The two chief witnesses of the day were James B. Smith, vice-president and general manager of the Western Fuel Company, and the only "higher-up" of the eight indicted coal barons to last out the long trial, and Edwin Powers, former assistant to Superintendent F. C. Mills of the coal concern and the witness most feared by the defense.

Smith was put on the stand by the Western Fuel defense after the other defendants who were all employees under him. To the surprise of the prosecution, he proved a good witness and worthy antagonist of Special Prosecutor Matt I. Sullivan.

Smith is Confident.

Smith refused to himself get caught in any of the traps, and so confident was he of his ability to answer the opposing attorneys, he refused to let his own counsel, Stanley Moore, interpose objections to questions propounded him in the course of his cross-examination.

"I'm going to give Mr. Sullivan every chance to interrogate me," he said, although at many crucial questions he said he knew nothing about the topic at issue or else he could not answer for the statements of other witnesses.

Asked about the books of Superintendent Mills, which showed regular and heavy "overages," Smith confessed that he never examined these accounts—hardly realized that they were kept and really paid little attention to what they showed in respect to the constantly enlarged supply of fuel, credited to the coal concern. Mills' reports, said he, never caused



him either surprise or suspicion. In fact, he said, he trusted all his employees, although, as he remarked in the case of "Eddie" Powers, he never made any of these employees his "acquaintances."

Smith was a positive and consistent denier when it came to answering questions about the significance of the much mooted "donation account" of the Western Fuel Company. He said that there was nothing to cause comment about the gifts of coal and money to anybody from R. P. Schwerin, vice-president of the Pacific Mail Company, down to the meanest employee of the steamship concern. It was just "exchange of courtesies," he explained—something which any corporation might do.

#### Powers Contradicts Smith.

According to Smith, "Eddie" Powers had proved a highly competent understudy to Superintendent Mills until he had been discharged on complaint of Mills in 1911. Smith professed ignorance of the fact that Powers had been ill in a hospital at the time he was accused of staying from his office and neglecting his duties. Powers himself, when examined later, on rebuttal, said that Smith knew of his illness.

Questioned as to his opinion of Powers as a valuable man in the fuel concern, Smith readily admitted that he had called him "a good man," adding that, "if he had taken the advice of his [2085—2017] superiors around our place, he'd still be a good man." Pressed on this point, Smith admitted that when Powers had successfully loaded a boat with "Telegraph Hill rock" instead of coal, he had proved himself "a good man in our business," and he stuck to

this, although the courtroom rocked with laughter.

### Ruling Against U. S.

In the final examination of these two witnesses, the Government lost under two important rulings of Federal Judge Maurice T. Dooling. It failed to get introduced as evidence a letter, written by J. B. Smith to the Nanaimo office of the coal company—a letter reported to be very damaging to the defense; and it failed to get into the record testimony from Powers regarding payments, regularly made by Smith, through him, to the engineers of the Japanese liners.

While Smith's testimony closed the case for the defense, the Government flung back a number of witnesses, United States Customs inspectors—all of them testifying against the defense to the effect that coal barges were almost regularly cleared of coal, instead of being partly emptied of their cargoes and then removed on the turn of the tides. The importance of this is that the defense has maintained that barges were not cleaned and that hence "over-ages" could not be correctly estimated.

Arguments in the case will begin Monday morning and according to every expectation, they will be concluded some time Tuesday, at which time Judge Dooling will instruct the jury and leave the final adjudication of the issues to the twelve men who, for two months, have devoted their time to listening to the evidence and the battling of the lawyers.

[2086—2017½]

[Newspaper Clipping from] "Examiner," February  
17, 1914.

FUEL CASE MEN WEEP OVER PLEA.

Attorney Moore's Final Appeal Stirs Emotion of  
Defendants Edw. H. Mayer and  
J. B. Smith.

"Where's Fred Stratton?"

"He Supplied the Defense With Questions, Why  
Wasn't He on the Stand?"  
Demands Roche.

"Where is former Collector of the Port Frederick  
Stratton," asked Special Prosecutor Theodore  
Roche in summing up for the people yesterday at  
the Western Fuel conspiracy trial in the United  
States District Court.

"Why was he not called to the stand when he was  
undoubtedly supplying the defense with questions  
to ask our witnesses?"

"Were not the Pacific Mail officials on J. B.  
Smith's pay-roll from R. P. Schwerin to the lowliest  
weigher?"

All Day Argument.

Roche and Stanley Moore, representing the de-  
fense, occupied all day yesterday in arguing the case  
before the jury, Moore's closing plea causing the de-  
fendant, Edward H. Mayer, to sob and J. B. Smith  
to wipe away a vagrant tear.

Attorney E. J. McCutchen, for the defense, and  
Special Prosecutor Matt I. Sullivan for the govern-  
ment, will conclude the arguments to-day, and Judge  
Dooling is expected to turn the case over to the

twelve men for their verdict late this afternoon.

“There can be no other verdict than one of guilty,” said Roche. “If there is anything else, the Government will have a right to believe that there has been a miscarriage of justice.”

#### Roche Cautions Jurors.

Roche warned the jury against accepting the defense's plea, later made by Attorney Moore, that the total percentage of overages and shortages was comparatively small in considering the enormous business done by the Western Fuel Company during the nine years covered by the indictment. He said that while \$45,000, the amount specifically claimed by the Government as stolen through fraudulent weights, might seem small, the total of the alleged thefts from consignees as well as from the United States would be close to \$750,000. It was on this gigantic sum, he said, that the Western Fuel Company was able to declare regular dividends of 10 per cent.

“This,” said Roche, “is always the cry of big business whenever the Government treads on its toes: ‘the amount is so small.’ If it is proved that these defendants conspired to steal as much as one dollar, they should be adjudged guilty. A failure to recognize this would act as an estoppel of all future prosecutions of rich corporations by the United States.”

#### Moore Scores Roche.

Stanley Moore's plea for the defense occupied the entire afternoon session. It began with an attack on Prosecutor Roche for his alleged “appeal to passion and prejudice” and “his bulldozing tactics”—a



speech which Moore characterized as “an insult to judge and jury.”

After scoffing at some of the minor points raised by the prosecution, Moore brought his appeal to a close with a plea to the jury to give the indicted men what was dearer to them than life itself—vindication of their honor. At this Mayer sobbed outright and Smith showed signs of deep emotion. [2087—2018]

**Affidavit of Elliott Johnson [dated March 11, 1914].**

[Title of Court and Cause.]

State of California,

City and County of San Francisco,—ss.

Elliott Johnson, being first duly sworn, deposes and says: That attached hereto are the articles, items and editorials printed in the San Francisco Bulletin, a daily newspaper published in the City and County of San Francisco, during the course of the trial of the above entitled cause.

ELLIOTT JOHNSON.

Subscribed and sworn to before me this 11th day of March, 1914.

[Seal]

C. B. SESSIONS,

Notary Public in and for the City and County of San Francisco, State of California. [2088—2019]

**[Newspaper Clipping from] “Bulletin,” December 9, 1913.**

**FUEL TRUST OFFICIALS FACE MUSIC.**

**Eight Defendants on Trial for Alleged Frauds  
Against Uncle Sam.**

Charged with swindling the Government for nine years by evading coal duties, “short weighing” fuel

orders and collecting rebates from Uncle Sam on mythical sales of imported coal, eight officials, directors and employees of the Western Fuel Company, indicted on conspiracy charges, were brought to trial before Federal Judge Maurice T. Dooling today.

The defendants, who were present in court to day, were:

John L. Howard, president; James B. Smith, vice-president and general manager; Joseph L. Schmitt, treasurer; Robert Bruce, director; Sidney V. Smith, director; Frederick C. Mills, superintendent; Edward J. Smith, weigher, and E. H. Mayer, weigher.

Information furnished by David G. Powers, former superintendent of the Western Fuel Company, formed the basis of the indictments returned last February. The evidence was gathered by Chief Special Agent of the Treasury William H. Tidwell.

Special United States Attorney-Generals Matt I. Sullivan and Theodore J. Roche are prosecuting the case, while the following legal lights are appearing for the defense:

Peter F. Dunne, Stanley Moore, A. A. Moore, Warren Olney, Jr., A. P. Black, Charles N. Willard, Ira Campbell, Samuel Knight, E. J. McCutcheon, J. R. Pringle, William I. Brobeck, Alexander Morrison and others.

#### Mission vs. Pacific Union.

From the wrangling indulged in during the examination of talesmen today it is evident that the taking of testimony will not begin until Friday. Judge Dooling is determined to hasten the proceedings, but each prospective juror is made the target of a broad-

side of queries that consume much time. Several jurors have been successfully challenged by Prosecutor Sullivan because of their admitted social and club affiliations with the defendants.

Sullivan displays a special interest in members of the Pacific Union Club, to which most of the defendants belong. On the other hand, Stanley Moore searches every talesman for a trace of the Mission Promotion Association or anything smacking of the Mission.

Joseph G. Gallagher, while being examined, broke the tedium by declaring that though he has been associated with Sullivan for forty years in various ways, "there has been no sociability about our business."

Slangy? Sure Mike.

Stanley Moore disturbed the decorum later by asking Gallagher:

"If Mr. Sullivan made a noise as if he was interested in the outcome of this case don't you think that might bias you?"

Gallagher also displayed some knowledge of slang with:

"That would cut no figure with me."

John T. Gilmartin, manager of the H. S. Crocker Company, whose dealings with State Printer Shannon called Theodore J. Roche to Sacramento to conduct an inquiry, said that he was not prejudiced because of Roche's presence in the case. Then everybody laughed. Gilmartin volunteered the information that he had never had the pleasure of an introduction to Roche. At the noon session Roche

introduced himself.

While the jury impanelment was proceeding the Federal Grand Jury on the floor below were poring over the books and records of the Western Fuel Company, seeking evidence that might substantiate the Government's contention that Pacific Mail Steamship Company officials and former United States customs officials acted in collusion with the "coal trust" to defraud Uncle Sam.

The following have been temporarily passed as jurors in the Western Fuel Case: Martin O'Connell, 1983 Fifteenth street; R. E. Herdman, Palo Alto; Joseph G. Gallagher, 1280 Valencia street; A. Christianson, 85 Second street; John T. Gilmartin, 230 Brannan street.

The case leaped into national notoriety when John L. McNab, then United States District Attorney, resigned, charging that improper influence was being brought to bear at Washington to prevent the case from coming to trial. President Wilson accepted his resignation immediately, but as yet has named no successor. The government's case is being pre-

(Continued on Page Five.)

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sented by Matt I. Sullivan and Theodore Roche, special counsel, who were also retained for the Diggs-Caminetti cases.

#### The Government's Case.

On the evidence submitted to the grand jury, the government will seek to show that, by an elaborate system of short weights, a three-fold fraud was perpetrated:



First, that on all coal imported, the government was cheated of duties by "short-weighing."

Second, that the government was cheated by short weight deliveries of coal sold to it for the army transport service and other uses.

Third, that the company kept all engineers of the Toyo Kisen Kaisha and many engineers of the Pacific Mail Steamship Company on a secret pay roll, in return for their consent to accept short weight fuel supplies, which the companies paid for at full weights.

In this way the government estimates that it bought coal which it never received worth \$500,000 at wholesale prices and more than \$1,000,000 at retail prices; that there were similar huge profits from private customers, and that on all coal, to whomsoever sold and whether at full weight or short weight, the government was cheated of a lawful share of its customs dues.

### Frauds Explained.

Testimony heard by the grand jury explained how these alleged frauds were accomplished. Summarized, this testimony was to the following effect:

The company owned its own mines and colliers. These colliers tied up along the company's pier to discharge. The coal was lifted from the hulls in mechanically operated scoops and dumped into tram cars, which ran on a skeleton trestle to the scales.

Each car was filled heaping full—so full that a large proportion of the last bucket of coal always slipped off the heaped carload and slid through the

open trestlework into the company's pockets. This spilled coal escaped duties.

In continuing to the scale, the car passed under a jutting beam, adjusted to such a height that it wiped off the load level with the car sides, and again the spill slipped into pockets below.

Then, when the car finally reached the scales, there was a support beneath the scale platform which checked its descent at a predetermined level. In addition, it was possible to shift the barrow of the car backward or forward on the truck, so that only a portion of its weight would register.

After the coal had all been dumped for storage into the pockets, which stood high above tide level, it was poured through chutes, as wanted, into barges, which were towed to the transport docks or alongside whatever ship was waiting to be coaled. From the barges it was again hoisted inboard by dredge buckets.

#### Buckets Half Empty.

A tally of these buckets was kept, four out of every sixty were weighed, and from these weights an average was struck which it was agreed should be charged in the reckoning as one bucketful.

But the government contends that, whenever a bucket to be weighed was loaded, it was filled to the brim under the personal direction of the foreman, whereas, between weighings, buckets often came so light that the bottom could be seen between lumps of coal.

Of course, such bare-faced frauds could not pass unreported without the connivance of the purchaser's

employes and Government employes, and the testimony heard by the grand jury was that the fuel company paid a regular percentage of its gains to those who winked at them.

A record of these overcharges is shown on the company's books, it will be argued, and the directors and officers passed in statements showing the overrun on incoming cargoes and the underrun to army transports and American bottoms. On this showing the government asks for the conviction of the directors, as well as the weighers and officers, alleged to be physically responsible. [2089—2020]

**[Newspaper Clipping from] "Bulletin," December 15, 1913.**

**DOES THIS SOUND LIKE "FINNIGAN"?**  
**Attorney for Indicted Fuel Officials Tells of Antics of Coal.**

**Changes in Weight Attributed to Climate.**  
**Government Puts on Its First Witnesses and the Jury Hears Testimony.**

The original "on agin', off agin', gone agin' Finnigan," bobbed up today in the coal fraud cases on trial in the United States District Court.

It popped suddenly out of a paper read by Attorney Warren Olney to the jury in Judge Dooling's court, in his outline of the defense of the eight officials and employes of the Western Fuel Company, on trial for conspiring to defraud the Government.

In this paper it was held that the weight of coal in transit here from foreign ports shrinks 1 per cent, the shrinkage being due to the action of the elements.

On the other hand, Olney's paper read, the same coal increases in weight 5 and 6 per cent after it has been unloaded here. This Finniganization of coal, the paper states, is caused by the humidity. Oxidization, after the coal gets here, also causes a weight increase of from  $\frac{1}{2}$  to 1 per cent.

Cites Government Experts.

"We are prepared to prove these conditions with the testimony of scientific experts," declared Olney. Then he mentioned two Government coal experts, Porter and Fielder, who, he said, knew by experiments that his words were true.

"But," he continued to the jury, "you can rest assured that they will not be summoned here by the prosecution."

Here Special Prosecutor Theodore J. Roche broke in with: "It will not be necessary to call either gentleman to prove the Government's case."

Other methods of alleged fraud charged to the defendants in the matter of manipulation of weights were dismissed by Olney as trifles of carelessness on the part of the customs officials or as having been due to unavoidable accidents.

Prosecutor Matt I. Sullivan in the government's opening statement said that he was prepared to prove, in substance, as follows:

The Government's Case.

That the government was swindled out of import duties on coal from April, 1904, to February, 1913, by false weighing, which would result in nearly every instance in a shortage of about 500 tons in a



cargo that was weighed at the foreign port at 5000 tons.

That false affidavits were made concerning the weights of cargoes to the customs authorities, and that the government was inveigled into paying rebates on this "shortage" when it was sold to American ships.

That, by manipulation of the scales, government was "short-weighted" on fuel orders for transports placed with the Western Fuel Company.

That the defendants were all aware of the fraud, three actively engaging in it, while five, as directors, were cognizant of it through financial reports which showed clearly in a special account just how much profit accrued from the nefarious practice.

#### Paid for Winking.

That every engineer of the Toyo Kisen Kaisha Steamship Company was kept on the payroll of the Western Fuel Company to wink at the short weights whereby their own employers were cheated out of thousands of dollars.

That certain customs officials and army and navy officials received presents of money and coal from the Western Fuel Company for their help in the successful operation of the frauds.

Sullivan declared that the Government would prove that the Western Fuel Company had sold 66,000 more tons of coal than its books show that it bought. The defense admitted that 61,000 tons are in this category, leaving the explanation of the problem to their scientific experts and some of it to carelessness and unavoidable situations.

Treasurer Joseph L. Schmitt, a defendant, has been excused from attending the proceedings on the ground of chronic illness. All witnesses, with the exception of Chief Special Agent Tidwell, who gathered the evidence, and Secretary Norcross of the

(Continued on Page Three.)

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fuel company, have been excluded from the courtroom.

### First Witness Called.

The first witness called by the prosecution was Hugh Donegan, a surveyor, who gave the jury a mental picture of the arrangement of the Folsom street bunkers, where much of the alleged weight manipulation is said to have been done. Then followed Secretary Norcross to establish the relations of the defendants with the Western Fuel Company, and to explain the business methods in vogue at the docks of the company.

The books and records of the fuel concern will next be produced and special agents under Chief Tidwell will take the stand to point out what evidences of alleged fraud they found in the books of the "coal trust."

In a tilt between Counsel Olney and Roche regarding Olney's falling into argument before the jury in presenting an outline of the defense, the court remarked.

"The jury will probably forget all about the argument before a month has passed." Roche agreed that it was probable and withdrew his objection with a smile. [2090—2021]

[Newspaper Clipping from] "Bulletin," December  
16, 1913.

FRAME-UP, DECLARES PRISONER.

U. S. Grand Jury Called in Special Session to  
Investigate Story.

More Than Woman in Case, Says Accused.

His Brother Declares He Has Sensational Story  
to Tell.

A special session of the United States Grand Jury was hurriedly called at noon today by Special Prosecutor Matt I. Sullivan to investigate a story that had reached him that there was a conspiracy afoot to discredit government witnesses and retard justice in the trial of the "coal fraud" cases, in which eight officers of the Western Fuel Company are defendants.

The information that such a conspiracy was afoot reached Prosecutor Sullivan a short time after the arrest of David G. Powers on a charge of contributing to the delinquency of Miss Amelia Cadruff, who resides at 50 South Park street. Powers was a former superintendent in the employ of the Western Fuel Company, and is one of the government's star witnesses for the present trial.

Four months ago Miss Cadruff made a complaint against Powers, but was denied a warrant. Today, through her attorneys, she was granted a warrant by Police Judge Crist, and Powers was placed under arrest. In Miss Cadruff's first application for a warrant she alleged that Powers, although a married man, had promised to marry her.

"Frame-up," He Says.

When taken into custody, the prisoner smiled and

declared: "This is a frame-up. The Western Fuel officials may figure that my arrest will strengthen their case, but they are figuring without the Government attorneys, who have been anticipating their move. This will prove a boomerang. I'll be exonerated, and the scheme exposed. I know who is behind this play, and I will show my hand when the proper time comes. I am absolutely innocent of this charge, as was proven once before, when the warrant was denied. Miss Caduff's 'friends' were willing to call her off several months ago if my father would pay her one thousand dollars."

Edwin Powers, a brother of David G. Powers, said after he had heard of the arrest:

"That's the last straw. I am ready to tell my story now. The case of the Western Fuel Company directors is practically decided now. You might say that you saw me making frequent visits lately in company with Secretary David C. Norcross to the offices of Olney, McCutcheon & Olney. I'll tell what I went there for in the courtroom."

Archie Johnson, son of Governor Johnson, handled the Government's end of the Powers case today, while Prosecutors Sullivan and Roche were busily engaged in examining witnesses in the coal fraud case.

Among those subpoenaed for the Federal grand jury investigation this afternoon are Miss Caduff, her father, David Powers, the girl's attorneys and J. R. Pringle, Sidney V. Smith Jr. and Edgar Peixotto.

David Powers was bailed out immediately upon his arrest in bonds of \$5,000.



**FUEL SECRETARY ON WITNESS-STAND.**

David C. Norcross, secretary of the Western Fuel Company, occupied the witness-stand today in the trial of the eight officials and employes of the "coal trust," accused of defrauding the Government of import duties and by shortage on fuel orders.

(Continued on Page Two.)

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Norcross is the only official of the company who escaped indictment. He gave valuable testimony to the Federal grand jury that investigated the alleged frauds.

Special Prosecutor Theodore J. Roche conducted the examination of Norcross, which was for the purpose of laying a foundation for the Government's case. He identified the relations of the defendants with the Western Fuel Company.

**Location of Mines.**

In answer to Roche, the witness then described to the jury the location of the company's mines; the duties of its various employes; its methods of weighing at various points; the location of its various wharves and bunkers; the names and character of the barges and ships owned by the company, and a wealth of data and information concerning the company's affairs that Roche considered necessary for the enlightenment of the jury, that will probably be engaged with the trial for six weeks.

Norcross also identified books and records of the Western Fuel Company, which have been in the possession of the Government. When shown the minutes of Western Fuel Company directors' meetings

and financial reports made to the directors, he identified them as genuine.

#### Aware of Frauds.

With all these documents, Prosecutor Matt I. Sullivan declares the Government will 'prove that the accused officials were aware of and countenanced the alleged frauds for nine years. Monthly sheets submitted to the directors, showing, the Government claims, the amount of "overruns" and the company's coal, were also identified by Norcross.

Hugh Donegan, a surveyor, who explained to the jury with diagrams, the construction of the Folsom street bunkers, where most of the alleged short weighing was done, preceded Norcross for a few minutes on cross-examination by Attorney E. J. McCutcheon.

McCutcheon suggested to the court that the jury be taken over the property being described, saying that a shipload of coal would be distributed for their benefit to show the workings of the weighing system in vogue at the bunkers. But Prosecutor Roche objected to the proposed trip, declaring that he would prove that conditions are different at the bunkers now than they were before the indictments were returned. McCutcheon's invitation was turned down. [2091—2022]

[Newspaper Clipping from] "**Bulletin,**" December 17, 1913.

#### GIRL NOT IN COURT TO ACCUSE POWERS.

David G. Powers, witness for the Government in the coal fraud case, appeared in Judge Crist's court this morning to be arraigned on a charge of statutory offense, preferred by Miss Lena Caduff.

But Powers was not arraigned and instructed by the court, for the reason that neither the girl nor her attorneys, who had secured the warrant against Powers, were on hand in court.

Attorney Edward I. Barry, from the office of Sullivan, Sullivan and Roche, appeared in defense of Powers. Morris Oppenheimer, prosecuting attorney in Judge Crist's court, declared he knew nothing of the nature of the charge.

Barry then stated to the court that there were unusual circumstances in the case which would probably convince the court that the bail of \$5,000 in cash, as

(Continued on Page Two.)

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set in the warrant, was exorbitant.

He asked that the bail be reduced, since the defendant was a witness before the Federal court.

Judge Crist replied that in charges of this nature he did not ordinarily consider \$5,000 bail too high. He was not aware, he said, of the alleged extraordinary features in the case, but on proper showing he might be willing to reduce the bail.

Prosecutor Oppenheimer, turning to Barry, asked:

"Are you willing, as representing Sullivan, Sullivan & Roche, to guarantee the appearance of this defendant in court to answer the charge against him at any later date?"

"Certainly I will guarantee his presence," said Barry.

Oppenheimer then stated to the court that he concurred in the request for reduction of the bail. Judge Crist lowered the figure to \$2000 cash. The

arraignment went over one week.

After the arrest of Powers last night, his brother, Edwin A. Powers, former assistant superintendent of the Western Fuel Company, declared:

“My brother is being made the victim of a contemptible frame-up.”

He also declared that he would now go on the stand for the Government and tell unreservedly everything he knew. Heretofore he has been a somewhat reluctant witness for the prosecution.

#### FOG DELAYS TO-DAY'S SESSION OF TRIAL.

The trial of the eight officials and employes of the Western Fuel Company, charged with conspiracy to defraud the United States was delayed this morning by the absence of Juror Fred Becker, an Oakland butcher. A recess was ordered awaiting Becker's appearance. At 10:35 o'clock he rushed into court and said he was delayed by the fog on the bay. Judge Dooling accepted his excuse.

Prosecutor Theodore J. Roche called customs inspectors at Seattle to the witness-stand. They made a secret investigation at the Nanaimo mines of the Western Fuel Company in British Columbia, for the purpose of ascertaining the weighing system operated there. The witnesses, in detail, explained the methods of weighing coal practiced at the mines. The Government expects to show that shipments of coal from the mines “decreased” in weight to a degree even beyond that of “evaporation,” as explained to the jury by Attorney Warren Olney Jr. in his opening statement.

David C. Norcross, secretary of the Western Fuel



Company, the only official of the "coal trust" who escaped indictment, next took the stand. Special Prosecutor Roche will engage Norcross for the major portion of today's session for the purpose of laying a foundation for the government's case.

Norcross' testimony was concerned with the business methods of the Western Fuel Company.

At the opening of court no mention was made of the arrest in the Federal building yesterday of David G. Powers, one of the government's main witnesses.

Attorneys for both sides decline to make any statements about the Powers sensation, declaring that it was now a police court matter, and none of their affair. The Federal Grand Jury is still investigating.  
[2092—2023]

[Newspaper Clipping from] "**Bulletin,**" December 18, 1913.

### COAL TRUST PROFITS BY OVERRUNS

Secretary Testifies at Fraud Trial; Edward Powers  
Changes Mind.

David C. Norcross, secretary of the Western Fuel Company, gave some interesting bits of testimony as a reluctant witness for the Government to-day in the coal fraud trial. The company's books showed that from 1905 to 1911, inclusive, quarterly dividends were declared at 2½ per cent.

For 1912—the period covered by the alleged "frauds" against the Government—the quarterly dividends swelled to 17½ per cent. Norcross also admitted that the books showed a profit of \$21,000 from "overruns."

Report in the Federal building here to-day has it that Edwin Powers, brother of David G. Powers, a witness for the Government in the trial of the Western Fuel fraud case, will not testify against the defendants as he declared publicly he would do after the arrest of his brother, David, on complaint of Miss Nina Caduff.

Edwin Powers was formerly an official of the Western Fuel Company. Before the Federal Grand Jury, which returned the indictments against the eight officials and employees of the fuel company now on trial on charges of defrauding the government, Edwin Powers proved a very recalcitrant witness. The government authorities claim that he was in possession of secrets which would substantiate the allegation of the authorities that the eight defendants on trial were culpable of cheating Uncle Sam by means of evasion of customs duties and short weighing of government fuel orders.

Edwin Powers declared, after the sensational arrest of his brother David, on charges of contributing to the delinquency of a minor girl, that he had determined to tell all that he knew concerning the alleged fraudulent methods of the "coal trust" on the witness stand in Judge Dooling's court. Following his public statements, Prosecutors Sullivan and Roche interviewed Powers, with the result that he had "nothing to say."

At the trial to-day of the coal fraud cases David C. Norcross, secretary of the Western Fuel Company, was put on the stand to supply information concerning the business methods of his employers, con-

sidered by Prosecutors Sullivan and Roche as essential to the establishment of the government's case.

Chief Special Agent of the Treasury Department William H. Tidwell will follow Norcross on the witness stand. He will report to the jury the findings of government expert accountants, who have examined the books and records of the Western Fuel Company. Tidwell, who has been in charge of the gathering of all the government's evidence in the case, expects to show through the books of the "coal trust" that the defendants actively participated in the alleged fraud against Unce Sam.

To-morrow David Powers and Edwin Powers are scheduled to be called to the witness stand.

William Bunker, former chief engineer of the Pacific Mail Steamship Company's liner Manchuria, will follow the Powers boys on the stand. He testifies at the grand jury proceedings that his fuel orders had been "short-weighted" several hundred tons on various occasions. The prosecutors hope to show through Bunker that the government was cheated of rebates on coal that not not delivered.

Minutes of the board of directors' meetings from 1905 to 1913, inclusive, introduced in evidence, showed that thirty-six dividends were declared in this period at 2½ per cent.

During 1912 quarterly dividends of 17½ per cent were declared by the Fuel Company, according to the testimony of Secretary Norcross.

Norcross told of \$21,000 obtained as profits from the "overruns."

An "executive committee," which is a part of the business workings of the Western Fuel Company, proved a bone of contention at today's proceedings. Prosecutor Roche tried to draw from the witness, Norcross, the personnel of this committee in vain. Norcross, though admitting that there was such a body, said that he did not know the names of the men who composed it. [2093—2024]

[Newspaper Clipping from] "Bulletin," December 19, 1913.

### ALL COAL MEN DO IT, ASSERTS ATTORNEY MOORE.

Counsel for Indicted Fuel Officials Says "Overrunning" Is Universal.

In the trial of eight directors and employees of the Western Fuel Company on a charge of defrauding the Government before Federal Judge Dooling this morning, Stanley Moore, attorney for the defense, declared:

"If over-runs constitute fraud, I can say now that every man in the coal business in the United States is guilty of fraud."

The statement was made during the cross-examination of Secretary David Norcross of the Western Fuel Company. The system of computing overages was a main subject of dispute, the defense endeavoring to show that they were figured on the basis of weighing done by the custom-house officials.

Moore drew from Norcross a statement that water had been piped into a pile of 5000 tons of coal merely for the purpose of preventing spontaneous combustion.



Prosecutor Roche intimated that he may endeavor to gain access to the books of the Western Transport Company, a barge concern, which did the carrying for the Western Fuel Company. He drew out from Norcross the facts that the directorate of the two corporations was practically the same, and that Norcross was secretary of both.

The Federal Grand Jury this afternoon took up the investigation into the charges brought by Miss Lena Caduff against David Powers, an investigator for the government. The prosecution holds that there were peculiar circumstances in the bringing of this charge.

Edwin Powers, brother of David Powers, at first declared the charge was a "frame up" and said he would now testify freely in favor of the prosecution. He was to have conferred with Prosecutors Sullivan and Roche last night, but was not on hand.

Norcross' testimony concluded at noon. The prosecution's next witness is Special Agent of the Treasury Tidwell, who will furnish abstracts of the information gleaned from the Western Fuel's books.  
[2094—2025]

[Newspaper Clipping from] "Bulletin," December 23, 1913.

DEFENSE IN COAL "FRAUDS" IS OUTLINED.  
Indicted Officials to Base It on Small Percentage of  
Government Loss.

Indicted officials and employes of the Western Fuel Company will rely for the defense in large measure on the fact that out of the million odd dollars paid in duty on coal during six years the gov-

ernment lost only about \$12,000. Such was the substance of a declaration made to-day by Attorney Stanley Moore for the defense.

Special Prosecutor Roche had referred to the fact that the attorneys for the defense were continually harping on the small percentage of coal shortage in respect to the immense amount handled. He declared that it made no difference what the percentage was, if shortage were shown.

“ The defense objects to the statement that the percentage has no bearing on the matter,” declared Attorney Moore. “ We contend that, when it is shown that the difference represents only about 1 per cent on the volume of business transacted, it will appear ridiculous to say that any conspiracy existed. The matter of percentage is all-important.”

Before the trial of the Western Fuel officials is ended the prosecution will attempt to show that the amount of draw back obtained from the Government for duty paid on coal amounted to 6 per cent more than the amount of duty paid on the same coal, according to Special Prosecutor Roche. Reduced to figures, obtained from the books of the defendant Mills by W. H. Tidwell, who was on the stand this morning, on one barge load of coal, the Government paid a draw back on 66 tons 1200 pounds more coal than had been loaded on the barge in the first place. In other words, the Government refunded duty on more coal than duty was paid upon in this case. These figures were not disputed by the defense.

According to figures adduced by the Government attorneys to-day, based on every cargo which showed

a shortage during the six years under investigation, barges handling Western Fuel Company's coal to this port discharged 33,223 tons more coal than had been loaded into them and more than duty had been paid upon.

The trial will be continued until next Monday, after the end of to-day's session. [2095—2026]

[Newspaper Clipping from] "Bulletin," January 5, 1914.

SAYS THE COAL COMPANY KEPT A SANTA CLAUS.

Western Fuel Real Generous About Christmas Time, Declares Witness.

The Western Fuel conspiracy trial, in which eight directors, officers and employes of the coal company are accused of conniving to cheat the United States out of customs duties and "drawbacks" on duties paid, was resumed this morning before United States District Judge Maurice Dooling.

William Chisholm, marine superintendent of the Pacific Mail Company, took the stand and identified the names of seven employees of the Pacific Mail Company who are alleged by the prosecution to belong to the "donation account" of the Western Fuel Company—men who are alleged by the prosecution to have received gifts of money or coal.

These names are Captain Anderson, Chief Engineer Allen of the Asia, P. McCarthy, assistant treasurer of the Pacific Mail Company; Captain Wilson, the boss stevedore; Harry O'Day, B. P. A. Hartnett assistant manager of the Japanese line; J. W.

Hauxhurst, marine superintendent of the Asia, and J. J. Creighton.

Chisholm acknowledged that he himself has received gifts from the Western Fuel Company of money and coal, about \$50 in cash each Christmas since 1908, and also gifts of coal, a ton or two each year.

Chisholm said that he always received the "Christmas donation" from Superintendent Edward F. Mills; and that he also ordered the coal through him whenever the need arose in his household.

It was brought out on cross-examination that as early as 1907 Chisholm, in his position of marine superintendent, was indirectly informed that the Western Fuel Company was "over-weighting," and that on two occasions he was directly informed that this was the cause.

Once, in a letter, Chief Engineer Hamilton of the Siberia stated that during the trip from San Francisco to Honolulu he had to raise the log seven tons a day to make up the amount charged. Again, in a letter, Chief Engineer Bunker of the Manchuria reported a shortage of 123 tons. Chisholm said that he made some investigation of the matter, but could find no proof that the coal company was over-weighting. He acknowledged, however, that he never at any time had attempted to find out at what weight coal was loaded on the barges. [2096—2027]



[Newspaper Clipping from] "Bulletin," January  
7, 1914.

### FUEL FIGURES PROVE PUZZLE.

"Supposition Seems to Be That Court and Jury  
Can't Understand," Says Court.

"This case seems to be conducted on the supposition that neither the court nor the jury can understand anything about it." So Judge Maurice T. Dooling patly characterized the progress of the Western Fuel cases now on trial in his court this morning.

The cross-examination of Special Agent Tidwell, concerning his method of arriving at results in his investigation into the ways of the "coal trust" was continued; especially as to his method of determining the percentage of overages, that is over-weight of coal, alleged to have been brought about in the operation of loading coal on to barges from the bunkers and the loading of the ships from the barges. These percentages of overages entered largely into the exhibit put in evidence by the Government and Attorney E. J. McCutcheon spent the morning in an effort to break down before the jury the technical accuracy of the United States special agent. [2097—2028]

[Newspaper Clipping from] "Bulletin," January  
8, 1914.

### MARE ISLAND HEAD ON FUEL CO'S GIFT LIST.

Commandant Received \$100 Bonus, Is Testimony in  
Coal Fraud Trial.

A list of beneficiaries of the Western Fuel Com-

pany, to the extent of donations of free coal, was introduced in evidence at the trial of the eight indicted officials of the company yesterday. The list proved surprising, in that it contained the names not only of coal weighers and stevedores, but also of United States army officers and customs employes. Major Grant, U. S. A., is down for \$30 worth of coal on one occasion, and \$24 worth on another. E. Farmer, former clerk to Collector Stratton, is said to have accepted \$8 worth of coal in 1907. J. Twigg, H. Freund and D. Finnegan, Government weighers, are all on the company's books for gratuities of coal. The other names on the lists are employes of the Pacific Mail or of the Toyo Kisen Kaisha—W. Chisholm, J. W. Hauxhurst, P. H. McCarthy, Captain Wilson, J. Crichton and B. A. Harnett.

The prosecution contends that all these recipients of free coal from the company, from stevedore to army officer, knew of the frauds that are alleged to have been perpetrated on the Government, particularly through the method of short weighing, and that they knowingly accepted a ton or two now and then, as a sop for silence.

The prosecution made a desperate effort to have introduced in evidence vouchers from engineers of the Toyo Kisen Kaisha, showing that these officers had received regular payments from the coal company of a few cents a ton on all coal used on their boats; all of which coal the Government contends was regularly short-weighted.

That the commandant of Mare Island Navy Yard in March, 1910, received a bonus of \$100 from

the coal company, was a bit of information introduced into the evidence by the prosecution this morning during the continued examination of United States Treasury Agent Tidwell, who identified a voucher of the coal company to this effect.

The defense tried to suggest to the agent that the donations on the now famous list of the "coal trust" were to charity. Mr. Roche said that he had often heard that "charity covers a multitude of sins," and was perfectly willing for the witness to admit that "it is presumed some of the donations went to charity." Whether or not the Mare Island commandant came under this head was not brought out.  
[2098—2029]

[Newspaper Clipping from] "Bulletin," January  
9, 1914.

### COAL CABARET DESCRIBED BY DAVE POWERS.

Witness Says That Weigher Used to Entertain  
Japanese Engineers.

A wily weigher was Edward J. Smith, according to the testimony of David Powers in the Western Fuel case this morning.

"Smith was always telling me what a great weigher he was," said Powers. "When coal was being discharged from the barges into the steamers of the Toyo Kisen Kaisha, he would take the Japanese assistant engineers into the cabin and sing songs to them by the hour."

The picture of the debonair Mr. Smith fascinating an amazed group of oily little yellow men with song, in the ship's cabin, while the alleged business of

short-weighing of coal by his company was going on in the hold, brought a welcome laugh into the staid investigation into the methods of the coal trust now going on before Judge Maurice T. Dooling.

Powers gave a picturesque account of the manner of discharging coal at night. He described the intense gloom in which this operation was carried on, with the three or four pale lanterns to throw light upon the tubs being hoisted, with but three or four lumps of coal in each, instead of the full weight that went on the scales. He said that the custom-house weigher at night used to take his position alongside the boilers or in the cabin to keep warm and to keep clean.

Powers also said that he had often spoken directly to Edward J. Smith, to the defendant Mayer, and to Frederick Mills about fraudulent weighing and that all of these gentlemen had told him in various ways to "shut up."

He explained why it was that the Japanese engineers of the Japanese steamers were paid money, while the white engineers had to content themselves with a meager allowance of coal. He said that Edward J. Smith explained that the "good fellows only get a ton of coal."

The cross-examination of the witness was undertaken by Stanley Moore. Powers denied that he had ever told any representatives of any newspaper that he was to receive a large reward for his information for the Government against the Western Fuel Company—"enough to make him independent for life"—but admitted that somebody, whom he did not re-



member, had informed him that there is a United States statute which provides, under certain conditions, for the payment of money to anyone rendering such service to the Government as it may turn out that Powers is rendering. [2099—2030]

[Newspaper Clipping from] "Bulletin," January 12, 1914.

POWERS MAKES CORRECTION IN HIS TESTIMONY.

Western Fuel Witness Admits Hearing of Possibility of Remuneration.

David Powers, the young witness for the prosecution in the Western Fuel case, seems to be a size smaller than Saturday, when he took the stand to continue the testimony against the directors and employees of the coal company, now on trial before Judge Dooling, for fraud against the United States Government.

The effects of the nervous strain of the hammering cross-examination to which he was subjected last Saturday and which he realized was before him to-day were evident in the whole manner of the witness, and he startled the Court by asking if he might correct certain statements which he made Saturday on the ground that he was thoroughly confused, which was very apparent.

Powers acknowledged that Mr. Kidwell, the State treasury special agent, had spoken to him concerning the possibility of receiving a percentage of the fine or recovery of the civil suit against the Western Fuel Company.

The defense, in order to impeach the motives of

Powers in giving testimony, followed up his acknowledgment by recalling the fact that he was aware of a sugar case in Philadelphia where a large fine was recovered by the Government and where the informer received a big percentage. [2100—2031]

[Newspaper Clipping from] "Bulletin," January 13, 1914.

### CUSTOMS MEN BLAMED FOR SHORT WEIGHT.

Fuel Men Shifted Responsibility for Shortages, says Powers.

"As the records in Mr. Mills' office show, there was more coal regularly weighed out of the barges than was weighed into them. There was an average in 95 per cent of the cases." This was the definite testimony of Edward Powers, for twelve years an employe of the coal company, in the Western Fuel case this morning.

Edwin Powers is the brother of David Powers, whose testimony against the coal barons has just been completed. His evidence has been awaited with peculiar interest, for up to the very minute that he took the stand this morning he has refused to make any statement whatsoever as to what he would or would not testify to, for or against his former employers. He proves a poised and intelligent witness, and the evident and sincere reluctance with which he tells facts derogatory to the men with whom he worked for many years adds weight and impressiveness to his testimony.

Not only did Edwin Powers finally testify to the

fact of overages upon the coal barges as a regulation thing, but, when thoroughly questioned, he admitted that "The method of weighing—the custom's weighing—made these averages possible. A large part of the average was due to the fact that more coal went into the tubs that were weighed than went into the tubs that were hoisted when no weight was being taken."

The last four years of Edwin Powers' employment by the coal company, he enjoyed a position of considerable confidence as assistant to Frederick C. Mills, the superintendent—now one of the defendants. During this time he was in touch with the diary or dock book kept by Mills; and it is from the records of these books kept by the Western Fuel Company that he testified to the fact of averages in 95 per cent of the barges loaded and then unloaded.

Powers admitted that he had had, in his position of assistant superintendent, "quite a few complaints concerning shortages of coal from Pacific Mail engineers." When asked how often these complaints disturbed the calm of the Western Fuel superintendent's office, he said that the engineers had a habit of complaining "whenever they would catch me—whenever I didn't see them coming."

When urged to give whatever answer he or Superintendent Mills could make to these complaints by liner engineers, Powers said:

"I told them we were selling coal by weight, and that the United States customs was weighing it. And this was a true excuse, because Government weighers were weighing the coal, and Government

weighers were not kicking.”

He named William Bunker of the Manchuria, Thomas Sullivan of the Mongolia, Sawdeen of the same ship, and Hamilton of the Siberia as some of the engineers who had complained to him about short weight of coal. [2101—2032]

[Newspaper Clipping from] “Bulletin,” January 14, 1914.

#### WITNESS TELLS OF INTERVIEW WITH FUEL MEN.

That David Norcross, Secretary of the Western Fuel Company, during the time that the company was under investigation by the Grand Jury, made an appointment with Edwin Powers to take him to the office of the attorneys for the coal trust, and that Norcross did, in fact, take Powers fresh from the Grand Jury room, and when Powers was still under subpoena as a witness, to the office of these attorneys to confer with them, was the startling testimony brought into the case of the coal barons this morning.

Edwin Powers, who for four years was assistant to F. C. Mills, superintendent of the company, one of the men now under indictment, was on the stand having successfully weathered a cross-examination at the hands of Stanley Moore.

#### Boomerang for Defense.

The defense had been—disastrously to themselves—trying to impeach the testimony of the witness by having him testify to a visit he had made to the office of McCutchen and Olney, lawyers for the defense. *The* Theodore Roche took the stand and told him to tell the Court under just what circumstances



he had made this visit, and at what time.

“I was standing out in the corridor of the hall here,” Powers said, “during the time the Grand Jury was in session, when Mr. Norcross came up to me and said: ‘Eddie, come on over and have a glass of lemonade.’ We went over and had the lemonade, and then Mr. Norcross asked me to go down to the office of the attorneys for the coal company and explain about the overages. The next day he took me down there, and when we were going up Norcross said to me, ‘Eddie, I was speaking to Mr. Smith about you—James B. Smith—and I wish I could tell you all the fine things J. B. Smith says he is going to do for you.’ When we got to the office of McCutcheon and Olney they were all sitting there—Mr. Moore, Mr. McCutcheon and Mr. Olney. Mr. Norcross took a seat and there was a place already for me in the middle of them.”

Powers is a Good Witness.

To every question put by Moore, the witness had a quick and frank answer, that instead of serving in any way to weaken his direct examination given yesterday against the Fuel Company, it strengthened it at every turn.

When asked if Tidwell, the State Treasury special agent, had not spoken to him concerning the possibility of his receiving reward for his testimony for the Government, Powers answered:

“I told him he or the United States Government or anybody else couldn’t make an informer of me. He never approached the subject again.”

When asked if he was sincere in making this visit

to the lawyers for the defense, Powers retorted: "I was as sincere, Mr. Moore, as you were in asking me to go to your office."

Ordered to Underload.

In answer to a question as to whether any of the members of the Western Fuel Company had ordered him to bring about the averages that show in the books of the coal company, and that form one of the accusations of fraud for which the company is now standing trial, Powers said:

"F. C. Mills told me, on the transport dock, to underload the tubs."

The defense then tried to make the witness refuse to say that he himself knew that there was anything wrong in the method of weighing pursued by the company, but the witness came back with this:

"There was always an average on the barges of from 10 per cent to as high as thirty-five per cent. This shows conclusively that it was fraudulent, didn't it?" [2102—2033]

[Newspaper Clipping from] "Bulletin," January 15, 1914.

SPILLED COAL NOT WEIGHED, SAYS  
WITNESS.

Motorman on Folsom Bunker Run Tells How Fuel  
was Discharged.

John W. Smith, special customs agent, for some time employed by the Government to look into the methods of weighing at this port pursued by the Western Fuel Company, now under indictment by the Grand Jury, took the stand this morning and told what he saw on several visits to the company's bunk-

ers when coal was being loaded or discharged.

Smith's testimony covered about the same ground as that given by David Powers, who, when a customs agent, accompanied Smith on these tours of inspection.

Smith testified to watching the coaling of the Korea at night from a place of vantage on the captain's bridge, where he observed that the tubs that were weighed were well filled, while those that were not weighed were sometimes but half full. He said that there were but two rounds of weight taken in five hours. He watched the liner being coaled the next day, and noticed that the buckets were better filled in the daytime than at night. He testified to going to the Folsom-street bunkers, where he saw four cars filled and run over the scales without any weight being taken.

Fifteen minutes before court adjourned this noon, Joseph Waterdoll took the stand. For six years Waterdoll was employed by the fuel company as a motorman on the run at the Folsom Street bunkers. For eight years previous to that he worked for the Dunsmuir people in the same capacity, until their property was taken over by the Western Fuel. Waterdoll testified that when the Dunsmuir people were in charge the floor of the runway was planked so that any coal that might spill was held, loaded back into the cars and weighed, but that, with the installation of the Western Fuel Company, the planking underneath the hoppers was removed, so that all coal spilled dropped into the bunkers below and was never weighed.

Waterdoll said that this spilling of the coal was brought about by the cars being overloaded, when the force of the weight above the gate in the hopper kept the men from shutting off the fall of coal at the right time.

Waterdoll further testified that whole cars were sometimes discharged without being weighed at all; that he had served as dumper and motorman at such times, and that he had received orders to dump the cars without weighing from Edward Mayer. [2103—2034]

[Newspaper Clipping from] "Bulletin," January 19, 1914.

WITNESS SAYS "WINK" FILLED COAL  
BUCKETS.

Shoveler Testifies That Men were Signaled When  
to "Overload."

The Government strengthened its case against the Western Fuel Company this morning, through the testimony of employees of the company who had worked in the coal when it was being weighed.

Jim Balestra, once a coal shoveler for the Western Fuel Company, now a gardener on the D. O. Mills estate, was an interesting witness this morning. He not only testified that the shovelers overloaded buckets, but that they did so because they were signaled so to do by a "straw boss" of the fuel company. This boss was the hatch-tender and his signal was a wink—the "wink being given" when, as the shovelers were unloading a barge into a ship, the custom officer would come up to take weights. Upon this, Baleston testified, the "shovelers would go to work



to put on as much coal as they possibly could—fine coal, at that, because it weighed more.”

When no weight was to be taken, Baleston said, the buckets were filled “any old way.”

On cross-examination, E. J. McCutcheon for the defense seemed to find this matter of “giving the wink” a very delicate point, and questioned the witness at length concerning the respective positions of all parties implicated during the time the wink was alleged to have been given and as to the size of the hatch through which it is alleged to have been passed.

Witness testified that on one of the barges involved in the winking operation, the hatch was 60 feet long and as wide as the barge. Whether this would constitute an opening sufficient for a wink to go through was not, at the time court adjourned, determined.

Robert Sass, a barge-tender, finished his evidence against his former employees, and then Philip Ganasi took the stand. Ganasi worked as a shoveler on the barge, and his testimony was substantially the same as that given by the barge hands already questioned; that, when coal was being discharged from the barges the weighed buckets were overloaded, while the unweighed were but lightly filled, and that weights were but infrequently taken.

He said that the hatch-tender, employed by the company, named Rooker, threatened to fire on him on one occasion because a weighed tub he had filled was not sufficiently overloaded.

Ganasi testified that during the time of the Grand

Jury investigation Rooker had taken him to the office of F. C. Mills, when Mills had questioned him concerning what he had told the grand Jury. [2104—2035]

[Newspaper Clipping from] “Bulletin,” January 20, 1914.

PACIFIC MAIL HEAD CALLED AS WITNESS.  
Schwerine to be Asked if He Knows About Collusion  
in “Coal Frauds.”

A new sensation broke loose in the Western Fuel conspiracy case to-day, when the Federal grand jury ordered R. P. Schwerine, vice-president and general manager of the Pacific Mail Steamship Company, to appear this afternoon and relate what he knows, if anything, about the alleged collusion between officials of his company, certain former customs officials and the Western Fuel defendants, to defraud the Government.

Schwerine will be informed by Government Prosecutor Sullivan that his testimony will not render him immune from prosecution, if it is found that he has been culpable.

Besides Schwerine, A. J. Thompson, purchasing agent of the Pacific Mail Steamship Company; W. S. Miller, chief city weigher of the Western Fuel Company, and A. J. Schultz, stevedore, have been subpoenaed. According to the Federal authorities the Government prosecutors will attempt to show, among other things, that Schwerine and Thompson are members of the “donation club” maintained by the fuel concern, and to whom free coal is supplied,

as has been brought out in the testimony at the Western Fuel trial.

Today's investigation by the Government inquisitorial body is entirely independent from the trial now in progress before Federal Judge Dooling of the eight Western Fuel officials and the employees.

The grand jury has also instituted an investigation today into the alleged activities of several gumshoe men who have infested Judge Dooling's court since the beginning of the trial on December 9. "Skin 'Em Alive" Kelly, a notorious waterfront character, said to be the leader of the gumshoe men, who are understood to be in the employ of the defense, has been subpoenaed. H. Eccles, an oldtime race track figure, who has been constantly in attendance at the trial, has also been subpoenaed, as well as several John Does. These "sleuths" will be interrogated at length by the Federal inquisitors.

J. P. Burns, formerly assistant weigher for the Western Fuel Company, was the first witness to be called today by Special Prosecutor Theodore J. Roche. In substance, his testimony was corroborative of that given previously by several witnesses to the effect that tubs of coal to be weighed were filled to overflowing, while those that were not to be weighed were considerably lighter. Burns also testified that he personally observed on several occasions large quantities of coal flowing into the bunkers at Mission street without being weighed at all. The witness explained that this fraud was effected by so placing the coal cars that only half of the coal coming down the chutes was run into the car, while the

remainder would go into the bunkers unweighed.

When asked by Attorney McCutcheon why he didn't complain to Chief Weigher Wooster, the witness replied:

"He was too dishonest. It would be no use."

"The Missing Link."

The "missing link" of the case, which has been blamed for much "short-weighing," bobbed up in the testimony of Assistant Government Weigher Arnold Freund, who worked with Weigher Edward Mayer, one of the defendants. The witness said that

(Continued on Page Seven.)

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the link was so short that it raised the coal cars off the scales to such an extent that it made a difference of 3000 pounds in weight in favor of the "coal trust" in every two cars put on the scales. Freund could not say how long the link had been in the service before discovered.

Freund told the jury of a sleuthing expedition he operated when he was suspicious of Mayer manipulating the scales in favor of the fuel company. He declared that he chalked the connecting rod and later found chalk marks on Mayer's boots and trousers. Mayer had been accused before of pressing down on the rod so as to lessen the weight of the imported coal in the cars, thereby cheating the government of duties.

Juror Joseph Stackler, a blacksmith, questioned the witness concerning the dimensions of the "missing link," as compared to the other links that join the fuel cars.



J. Barfield, a government weigher, testified that he saw a Western Fuel employe shoveling into the bunkers imported coal that had not been weighed. He said that when he complained of this to Defendant Mayer, it was explained that the shoveler was a new employe and did not understand he was helping to cheat the government. [2105—2036]

[Newspaper Clipping from] "Bulletin," January 21, 1914.

COAL FREE TO SCHWERINE, HE TESTIFIES.

Norcross Said Bills Marked Paid Were Charged to "Operating Expenses."

That R. P. Schwerine, vice-president and general manager of the Pacific Mail Steamship Company, received from the Western Fuel Company \$1358 worth of coal during the last six years for his personal use, and for which he never paid one cent, was the direct testimony of David C. Norcross, secretary for the company, this morning.

Norcross said that regular orders for coal would come to the office of the Western Fuel Company from Schwerine; that these orders were given to James B. Smith; that a regular bill was made out for the amount of coal delivered to the Pacific Mail official, but that J. B. Smith would order the bookkeeper to credit the Schwerine account paid and to charge the amount to "operating expenses." Norcross said that all of this coal was delivered to Schwerine's home at San Mateo.

The books of the Western Fuel Company show that from September 11, 1907, to March 17, 1909,

Schwerine's donation of coal amounted to \$496; that

(Continued on Page Three.)

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from November 6, 1910 to June, 1913, there was \$862 worth of coal sent to him, with the compliments of the coal company.

A. J. Thompson, purchasing agent for the Pacific Mail, and William Chisholm, dock superintendent, were also mentioned by the witness as recipients of coal favors from the fuel company.

The prosecution brought out another illuminating statement from Norcross concerning the company's methods. About the middle of 1906 the local customs department was instructed from Washington that no money was to be paid customs weighers working overtime in the handling of coal, but that such men should receive instead the next day off, following the occasion of the extra service. This regulation was ostensibly in force until April, 1911, but through the statements of the fuel company's secretary on the stand today the Western Fuel Company continued to pay these government weighers 51 an hour for all overtime. This money "was paid to customs weighers by Edward Mayer, who received the money from the cashier, under directions from James B. Smith. No receipt was ever taken from the weighers for this money." This money also was charged to "operating expenses."

This admission by the company's secretary that government employes were in the pay of the coal men is considered significant by the attorneys for the government, for Special Prosecutor Roche stated in

court this morning, "Up to this time all the weighers have denied it."

The prosecution finished the case for the government a half hour after the second session of court today. The first move of the defense was to move that the court dismiss the case, on the ground that the government failed to prove a "conspiracy," as charged in the indictment. [2106—2037]

[Newspaper Clipping from] "Bulletin," January 22, 1914.

### FUEL CO. PRESIDENT STRICKEN.

John L. Howard Suffers Sudden Blow From Apoplexy After Day in Court.

The prosecution in the Western Fuel cases has been requested to make a motion for the dismissal of the charge of conspiracy against John L. Howard, who was stricken with apoplexy at his home and is believed to be dying.

This afternoon it is expected that steps will be taken to communicate with the Attorney General in Washington, when the facts of Howard's illness will be laid before him.

In the event of an immediate reply there will be a formal request made to Judge Dooling in open court today.

Dr. Liliencrantz said this afternoon that Howard is in a critical condition, and that he is not expected to survive the night. For many months he has been suffering from high blood pressure, and the stroke last night was the outcome. His left side is paralyzed, and his family have been informed of his critical condition.

John L. Howard, president of the Western Fuel Company and one of the defendants in the United States District Court now on trial for frauds against the Government, was stricken with apoplexy at his home, 87 Vernon avenue, Piedmont, last night, and is now reported to be in a critical condition.

Howard returned to his home yesterday afternoon after spending the day in court. He complained of feeling uncomfortable, but he did not regard his condition as serious until he felt himself losing consciousness. His son, John L. Howard, Jr., summoned Dr. Liliencrantz of Oakland, and later Dr. Emil Schmoll of San Francisco was summoned to Oakland.

Both physicians expressed much concern over their patient's condition, because after the first stroke had passed symptoms of paralysis began to develop.

Howard has been in constant attendance in Judge Dooling's courtroom since the beginning of the trial on December 9.

#### MOTION TO DISMISS CONSPIRACY CASES.

An attempt to throw the Western Fuel conspiracy case out of court will be launched tomorrow before Federal Judge Dooling, when the battery of lawyers, representing the eight defendant officials and employes of the Western Fuel Company, will ask that the prosecution be dismissed on the ground that no conspiracy has been established.

In the event that the dismissal motion is denied, further motions will be made to quash the indictments against Sidney V. Smith and Robert Bruce,



directors of the fuel concern, on the ground that the testimony adduced by the prosecution has failed to connect Smith and Bruce with the alleged conspiracy to defraud the government.

If Judge Dooling denies the various motions in behalf of the defendants tomorrow, the trial will be resumed Monday with the beginning of taking testimony for the defense. It is announced by the defendants' attorneys that they will base their case on the contentions as outlined in Attorney Warren Olney's opening statement to the jury. Olney told the jury that the overages and shortages charged to the defendants by the government, and which resulted in the sale of 66,000 tons of coal, which were never bought by the Western Fuel Company, will be explained by the testimony of experts, who will show that evaporation, humidity and moisture are to blame for the varying weights of coal handled by the accused fuel trust. [2107—2038]

[Newspaper Clipping from] "Bulletin," January  
26, 1914.

### 3 DIRECTORS FREE OF FUEL FRAUD CHARGE.

Only One Director and Three Coal Weighers Left  
to Stand Trial.

With the death of John L. Howard, the president, and the dismissal by the court's ruling of the charges against him and three other directors, there is left to-day to stand trial for conspiracy to defraud the government only four members of the Western Fuel Company. These men who are left to face the

charges of fraud are James B. Smith, Frederick C. Mills, E. H. Mayer and E. J. Smith.

The last two are but weighers, men who actually worked in the coal during the times the alleged fraudulent weighing was going on. Frederick C. Mills is another employe, the dock superintendent.

James B. Smith is the only director left to stand trial. He has been the general manager of the company, in charge of the docks here.

But the other directors, because of insufficient evidence, are cleared. These men are Sidney V. Smith, Robert Bruce and Joseph L. Schmidt.

"We concede that the evidence we presented against these three directors was slight, but in opinion it pointed to guilty knowledge," was the contention of the special prosecutors. This was the point about which all the argument before Judge Dooling Saturday for dismissal of the charges against these defendants revolved. This was the point that the judge, after listening to arguments throughout the day, decided was not established by the prosecution.

"The difficulty of getting evidence is no excuse for not getting it," remarked Judge Dooling.

"The 'higher-ups,'" declared Special Prosecutor Matt I. Sullivan, "always remove themselves as far as possible from the chance of being caught in the toils. It is ever the underlings who commit the wrongs and run the chances—the men, who, working for nominal pay, do the bidding of their employers.

"And James B. Smith," continued Sullivan, warming to the subject, "the man who had complete charge of the coal company's operations at this port,

who employed all the help, who was in constant touch with every practical detail of the business and who not only knew of the methods employed, but offered frauds and even committed many of them himself—this man, in the opinion of the government, is most guilty of all.

“It was Smith who bribed the Pacific Mail officials and who was responsible for the corruption of government weighers, too. It was Smith who bribed R. P. Schwerine with regular presents of coal—Schwerine, high in business and social circles and supposed to represent the stockholders of the big Pacific Mail Company and stand on guard to keep out the petty grafters who might be caught conniving at thefts from his own company.

“We never supposed that Schwerine would stoop so low as to accept a couple of tons a month from the company—coal which J. B. Smith charged to ‘operating expenses’—and then let these petty grafters remain in his employ.

“In my opinion,” remarked Sullivan, “these disclosures of money and coal payments to Pacific Mail people and to Government weighers was simply lifting one edge of the curtain.”

In spite of the fact that charges against them have been dismissed, Robert Bruce and Sidney V. Smith appeared in court this morning and followed attentively the testimony of the first witness called for the defense of the Western Fuel Company—one director and three employes of which remain to face trial for conspiracy.

Arthur Millar, who has served the company as gen-

eral foreman since October, 1911, testified that he had always instructed hatch tenders to keep the tubs evenly filled, and that he had never given nor received any orders to overload weighed tubs or to fill them with fine coal. He harped on the fact that "tubs are evenly filled" and testified that he had often seen steamers being coaled when the "tubs were all evenly filled," but could not remember just when these occasions were, explaining that the life he led was indeed a "busy life." Mr. Millar is still in the employ of the coal company.

Frank Wilson, a hatch tender, whose name has often come into the record through testimony of witnesses for the prosecution, said that he had worked for the Western Fuel Company for the last ten years, and that during that time he was innocent as a babe of any form of duplicity. Wilson seemed to be a curiously single-minded man, his entire testimony clinging tenaciously to the one idea that his one aim while working for the company was to "keep the tubs evenly filled at all times. Have no trouble with the weighers."

Andrew Rocca, a cherubic Mexican, gave practically the same testimony as Frank Wilson, perhaps a little stronger, for he stated that in all the time he served as a hatch tender for the company he had never seen a weighed bucket bulge over to the slightest degree; but that they were always even. "Always keep da tubs even," was the reiterated testimony of Mr. Rocca. [2108—2039]



[Newspaper Clipping from] "Bulletin," January  
27, 1914.

## FUEL "FRAUD" LAWYERS MAKE BIT OF A STIR.

Displeased at Presence of Government's Star Witnesses in Courtroom.

A bit of a stir was created in the United States District Court today when Attorneys Stanley Moore and E. J. McCutcheon, of counsel for the defense, at the trial of indicted Western Fuel Company men, objected vehemently to the presence in court of David and Edwin Powers, brothers and former assistant superintendents of the company. They did not address their objections to the bench, but engaged in a spirited parley with Special Prosecutors Sullivan and Roche over what they called the "unfairness" of allowing the Powers brothers to listen to testimony of witnesses for the defense—still in the employ of the Western Fuel Company—in the trial in which it is charged that the defendants cheated the government of nearly a million dollars.

Prosecutor Sullivan insisted that, as the Powers brothers had finished their testimony for the government and were still under subpoena they had a right to sit in court. The point was not formally made to the court and Judge Dooling was not called to pass upon it.

The opposition to the presence of the Powers came when Frank Wilson, hatch tender for the Western Fuel Company, was being cross-examined by Special

Prosecutor Sullivan. The prosecutor sought to elicit from the witness the subject matter of a conversation he is said to have had with Edwin Powers, following the indictment of the Western Fuel defendants, and in which Wilson is alleged to have said, "I wonder if they are going to bring me into the case, What can I do? The waterfront owes me a living."

"If you are called as a witness you can tell the truth. You know what was done down there at the bunkers," Powers is said to have replied to Wilson at the time.

Wilson on the stand denied that any such conversation had taken place with Edwin Powers.

Another link in the chain of evidence being welded by the Government prosecutors featured today's session. Blacksmith W. R. Olinder of the Western Fuel Company, on cross-examination, testified that he was called upon to straighten out an objectionable link that coupled the coal cars on the Mission-street bunkers of the "coal trust," the prosecution seeking to show that this link affected in favor of the company the weight of the coal in the two cars that they joined. The witness testified that the link in question was employed on the Mission-street bunkers. Heretofore William Delaney, weigher, for the fuel company, and Arnold Freund had testified in behalf of the Government that a short link, which helped to cheat the Government of duties in the weighing of coal, was used to couple cars on the Folsom-street bunkers. Freund declared on the stand that when he discovered the peculiar link he found that it so lifted the cars from the scale while being weighed that 3000

pounds of coal in a load of 21,000 pounds escaped import duty.

When asked by Prosecutor Sullivan whether or not James B. Smith and Frederick C. Mills, defendants, were not present when he was called upon to fix the mysterious link on the Folsom-street bunkers, the witness said he was too excited to notice who was present.

Olinder testified that on every occasion that he was called to the bunkers in response to a remonstrance from the Government weighers he was too excited to notice who was present when he made the necessary repairs. [2109—2040]

[Newspaper Clipping from] "Bulletin," January 28, 1914.

#### MORE WESTERN FUEL EMPLOYEES ON STAND.

More employees of the Western Fuel Company were called to the witness stand today in an endeavor to refute the testimony of government witnesses, who told at length, in detail, and corroboratively, of the frauds charged in the indictments against the defendants.

Several days will be occupied by similar testimony before the defense calls upon experts to testify that the shortages and overages of coal alleged by Uncle Sam is caused by the action of the elements.

Joseph Desmond and John T. Linehan, now employed by the coal trust, today testified to the effect that all the testimony produced by Government Prosecutors Sullivan and Roche concerning the al-

leged frauds is without foundation in fact. [2110—2041]

[Newspaper Clipping from] "Bulletin," February 2, 1914.

### COAL EXPERT TAKES STAND IN FUEL WAR.

The long-threatened "expert testimony in the Western Fuel case began today, when S. W. Parr, authority on coal, was called to the witness stand by the defense. Parr has been professor of applied chemistry at the University of Illinois for 23 years.

Moisture, evaporation, humidity and other elements will be accused of the discrepancies in the weights of coal between Uncle Sam's calculations and those of the indicted "coal trust." [2111—2042]

[Newspaper Clipping from] "Bulletin," February 11, 1914.

### COAL FRAUD TRIALS NEARING THE CLOSE.

Officials of Company Testify in Own Behalf.

General Manager James B. Smith, Superintendent Frederick C. Mills of the Western Fuel Company, defendants in the coal fraud trial in Judge Dooling's court, took the witness stand in their own behalf this afternoon. They denied all the government's charges that they actively assisted in the alleged swindling of Uncle Sam out of customs duties and fuel.



Edward J. Smith and Edward Mayer, defendants, checker and weigher, respectively, for the indicted "coal trust," also put in a general denial of any participation in the alleged fraud.

It is expected that the defense will close tonight and that the case will go to the jury Friday. [2112—2043]

[Newspaper Clipping from] "Bulletin," February 17, 1914.

### COAL CASE CLOSES IN HOT WORDS.

Defense Abandons Argument for Clients and Attacks Prosecutors.

Attorneys Matt I. Sullivan and Theodore J. Roche, deputed by President Wilson to represent the United States Government in the prosecution of the Western Fuel fraud defendants, were mercilessly grilled, their integrity attacked and their motives impugned, before the jury in Federal Judge Dooling's court today, by Attorney E. J. McCutcheon, for the defense, in a fiery speech that consumed a full hour of the two hours allotted to him for argument.

McCutcheon sneeringly charged the prosecutors with "misrepresenting the majesty of the law."

McCutcheon's Fulmination.

"At no time during the progress of this trial," he declared, "have these gentlemen shown any inclination to give these defendants a fair trial. I say this with a full realization that if it has not been established in your minds this assertion will redound to my own discredit. These gentlemen do not represent the majesty of the law. They are here simply for a

fee, and they want you to help them to hang at their belt the scalps of these defendants. Their claim that they represent the majesty of the law is an effrontery. It is without parallel in the history of criminal law. Who is the government they speak of in this case? They are the government, it appears, and they are here for their fee."

Without Evidence, He Says.

McCutcheon insisted there was no evidence to warrant the prosecution of the defendants on a conspiracy charge and declared the prosecutors' sole interest in the case was not to subserve the law, or to protect the government from fraud, but for the purpose of getting their fee at the expense of the blasted reputations of innocent men.

McCutcheon finally passed on to the "missing link" in the case. This link, which has been a popular bone of contention throughout the long trial, was one which, according to the testimony of several witnesses, was used to couple coal cars on the Western Fuel bunkers. It was established in the testimony that the link was bent so as to cheat the government of duties on tons of coal each time the cars were placed on the scale.

McCutcheon told the jury that this link was discovered in 1905, the offense, if any, having occurred at a time beyond the statute of limitations. He said the link incident could not be taken into consideration by the jury on this account.

An Interruption.

At this juncture both Attorneys Sullivan and Roche jumped to their feet and interrupted the coun-

sel for the defense with the suggestion that the court would decide upon that point, and with the further information that the statute of limitations did not figure, because, according to the indictment, the conspiracy charge was continuous from 1904 to 1912.

### Tidwell is Toasted.

The jury was reminded of the recent death of John L. Howard, late president of the Western Fuel Company, a defendant in the case, who died from heart failure during the progress of the trial. Howard's memory was brought before the jurors when McCutcheon interrupted his excoriation of Sullivan and Roche to attack the special agent of the United States Treasury, William H. Tidwell. The attorney scored Tidwell for his "palpable unfairness in his determination to stop at nothing to make a reputation for himself."

"What does it matter to Tidwell if the heart of John L. Howard was crushed by this unjust charge?"

Next, McCutcheon accused Tidwell of contracting with David G. Powers, former official of the fuel concern and a government witness, for perjury.

Ignoring the tirade of McCutcheon, Sullivan this afternoon made his argument. He devoted his entire time to whipping over the evidence adduced from the scores of witnesses. Coldly but forcefully he arraigned the defendants and demanded a verdict of guilty.

For the first time since the beginning of the trial women spectators were present today. More than half the number of spectators were women.

## Sullivan to Speak Last.

Court convened an hour ahead of schedule, and the session will be prolonged until Special Government Prosecutor Matt I. Sullivan completes the final plea this afternoon for conviction of the four defendants, General Manager James B. Smith; his brother, Edward J. Smith, a checker; Superintendent Frederick C. Mills, and Edward Mayer, a weigher.

Attorney Stanley Moore opened the argument for the defense yesterday, following Special Prosecutor Theodore Roche. Moore declared that the 66,000 tons increase in the weight of the coal handled by the indicted "coal trust" was accounted for by the inaccurate system of weighing employed by the Government, and by moisture.

## Defends Stratton.

In reply to Roche's reference to former Collector of Port Stratton as the man who aided the defense attorneys in their vain attempt to impeach the testimony of Treasury Agent Tidwell, Moore declared that Stratton had enjoyed a long and honorable career both as a State and Federal official, and characterized the dragging of his name into the case as "only another instance of the wholesale slandering and blackening of estimable men, indulged in by the Government prosecutors."

Prosecutor Roche took occasion during the course of his argument to pay a tribute to Edwin Powers, former assistant superintendent of the Western Fuel Company, who proved the Government's star witness, although he was known as a hostile and reluc-



tant witness before he took the stand.

“This sterling young Irishman,” said Roche, “true to the traditions of his country and his adopted country, refused to turn informer. Only when nettled by the defense’s attorneys, who insinuated that he was not telling the truth, and that he was interested in a reward, did Powers divulge any portion of the vast amount of information he possesses concerning the frauds practiced by the Western Fuel Company.”  
[2113—2044]

[Affidavit of Elliott Johnson, Dated March 19, 1914.]

[Title of Court and Cause.]

State and Northern District of California,

City and County of San Francisco,—ss.

Elliott Johnson, being first duly sworn, deposes and says: That in addition to those articles attached to his affidavit on file herein, which appeared during the course of the trial of the above-entitled action in the San Francisco “Bulletin,” the cartoon attached hereto appeared in the said San Francisco “Bulletin” under date of January 30, 1914.

ELLIOTT JOHNSON.

Subscribed and sworn to before me this 19th day of March, 1914.

[Seal]

C. B. SESSIONS,

Notary Public in and for the City and County of San Francisco, State of California.

(The cartoon referred to in the above affidavit as appearing in the San Francisco “Bulletin” in its issue of January 30, 1914, was entitled, “Breaking Even—If the Consumers Ever Get a Chance to Sell

a Ton of Coal to the Coal Man.” Said cartoon is sent up in the original to the Circuit Court of Appeals for the Ninth Circuit under that certain stipulation and order of the Court hereinafter embodied in this Bill of Exceptions, and is, by said stipulation and order, made a part of this Bill of Exceptions in all respects and with the same effect as though incorporated at large herein.) [2114—2045]

**[Affidavit of Samuel Knight and Stanley Moore,  
Dated March 19, 1914.]**

[Title of Court and Cause.]

State and Northern District of California,  
City and County of San Francisco,—ss.

Samuel Knight and Stanley Moore, being duly sworn, deposes and says, each for himself:

That he is, and has been during the trial of the above-entitled cause, one of the attorneys for the defendants herein and engaged in the trial of said cause;

That he was not aware, nor upon information and belief were any of the other attorneys for the defendants aware, nor upon information and belief were any of the defendants aware, until after the trial of said cause had been concluded, that during said trial any of the jurors impanelled to try said cause read any of the newspaper articles referred to in the affidavits herein.

SAMUEL KNIGHT.

STANLEY MOORE.

Subscribed and sworn to before me this 19th day of March, 1914.

[Seal]

C. B. SESSIONS,  
Notary Public in and for the City and County of  
San Francisco, State of California. [2115—  
2046]

[Title of Court and Cause.]

State of California,

County of Alameda,—ss.

**Affidavit [of Joseph Stackler, Dated March 3, 1914].**

Joseph Stackler, being first duly sworn, deposes and says: I was one of the trial jurors in the above-entitled case.

One of the statements most frequently made in the arguments in the jury-room was that the defendants had not called any of the stevedores or shovelers.

JOSEPH J. STACKLER.

Subscribed and sworn to before me this 3d day of March, 1914.

[Seal]

F. H. BARTLETT,  
Notary Public in and for the County of Alameda,  
State of California. [2116—2047]

[Title of Court and Cause.]

State of California,

County of Alameda,—ss.

**Affidavit [of J. H. Bromberger, Dated March 3, 1914].**

J. H. Bromberger, being first duly sworn, deposes and says: I was one of the jurors on the trial of the above-entitled case.

One of the statements most frequently made in the arguments in the jury-room was that the defendants had not called any of the shovelers.

J. H. BROMBERGER.

Subscribed and sworn to before me this 3d day of March, 1914.

[Seal]

F. H. BARTLETT,

Notary Public in and for the County of Alameda,  
State of California. [2117—2048]

[Title of Court and Cause.]

State of California,

City and County of San Francisco,—ss.

**Affidavit of Stanley Moore [Dated March 5, 1914].**

Stanley Moore, being first duly sworn, deposes and says: I am one of the attorneys for the defendants.

At the time the trial commenced and at the time the prosecution rested its case, it was the intention of the attorneys for the defendants to call men shoveling in the barges to testify as to the loading of the buckets and the evenness with which they were filled. This matter was mentioned in several conferences with other matters, and was mentioned in a conference during the last week in which the prosecution was putting in testimony. In all these conferences the other attorneys and I were agreed as to the advisability of calling these witnesses.

Our evidence went in so slowly, and there was so much time consumed on cross-examination, that we began to feel that the trial was lengthening out unduly. For example, we had calculated the testimony of the experts would occupy about a day and one-half,



and it in fact occupied an entire week.

I had interviewed a number of the barge shovelers including a shoveller by the name of Kearney, Jack Wilson and four or five others. For more than a week, I kept Wilson and Kearney in attendance upon the Court, waiting for them to be reached. Sometimes I would excuse them for a morning, if at the beginning of a morning session, I could see they would not be reached that session, I would tell them to be back in the afternoon.

If time had permitted, I had intended to call a considerable number of shovellers, but at the time of interviewing them, I discovered they were mostly foreigners speaking English very [2118—2049] imperfectly, and some of whom could only be understood through the use of an interpreter. For example, there were two barge gangs actually working at the time I was interviewing the shovellers, each gang consisting of eight shovellers. In one gang were three Austrians, one Mexican, one Chilenian, one Swede and two Americans. In the other gang, were two Peruvians, four Chilenians, one Mexican, and one American.

To have examined these shovellers on the witness-stand would have been a long process, and more than half of them would have had to give their testimony through the medium of interpreters. I think the testimony of these shovellers alone would have occupied fully a week's time on the trial.

We had called Arthur Mullen, the general foreman in charge of the barges, and Frank Wilson and Rocca, the hatch-tenders or foreman of the crews.

I kept three of these shovellers in attendance or on call until the last two days of the trial. We then decided that the case would be rested on the following Friday early enough in the day to give the prosecution an opportunity to put in rebuttal before five o'clock. So we eliminated all our remaining evidence and confined our further showing to the testimony of the defendants. I am very sorry now that we did not call every one of the shovelers, all of whose testimony was favorable, because the arguments of the counsel for the Government made much of our failure to call them, and as this omission on our part, as I have since been informed by four of the jurors with whom I have talked, and I believe the fact to be, was one of the chief arguments made in the jury-room in favor of a conviction. I now feel that a mistake was made in not calling these shovelers, and if the trial were to be had over again, every one of them would be called. [2119—2050]

They told me that their instructions were to keep the tubs filled evenly, and they did keep them as even as they could. They, also said there were no instructions given to overload tubs which were to be weighed or underload tubs which were not to be weighed. In fact, they stated, they had no means of knowing when weights were to be taken.

At the time the prosecution rested, and until we began to fear that our case was taking an undue length of time and that perhaps we were over trying it, it had always been the intention of counsel to subpoena and put up on the stand the custom-house weighers, although we understood that they had been

instructed not to talk to us without first reporting to Mr. Tidwell. After our evidence commenced to lengthen out we commenced to consider the advisability of calling only a *proportion* of the weighers and for this purpose I picked out the names of five weighers who had been long in the service. We had also intended calling a number of inspectors. During the last days of the trial, I reduced their number to three. On the next to the last day of the taking of testimony, a Wednesday, I had a final conference with the other counsel as to the necessity for calling these five weighers and three inspectors, and it was decided that their testimony would lengthen out the trial too much, and so it was decided not to call them. I am informed and believe that their testimony would have been very favorable to the defendants, and I now regret very much that we did not call them.

Of course, counsel have to assume the responsibility for their own mistakes in judgment, and I mention these matters only because of their possible consequences to the defendants and merely as a circumstance which I think the Court ought to know as bearing upon the defendants' positions, and to be considered [2120—2051] by the Court, if it can see its way clear to do so, in exercising its discretion upon their application for a new trial.

STANLEY MOORE.

Subscribed and sworn to before me this 5th day of March 1914.

[Seal]

C. B. SESSIONS,

Notary Public in and for the City and County of  
San Francisco, State of California.

[Affidavit of W. P. Lindley, Dated March 11, 1914.]

[Title of Court and Cause.]

State and Northern District of California,  
City and County of San Francisco,—ss.

W. P. Lindley, being first duly sworn, deposes and says:

That he is and has been for over twenty years last past a resident of the City and County of San Francisco, in this State, and has been for several years last past continuously up to the end of the year 1912 a chief engineer of the Pacific Mail Steamship Company engaged and acting in the capacity of chief engineer, at different times during said period, of the steamers "Aztec," "Barracuda," "City of Para," "Acapulco" and "Algoa"; and affiant is now and has been since the 24th day of January last, chief engineer of the Steamship "Pleiades" belonging to and operated by the Luckenbach Steamship Company, which is running a line of steamers between Pacific Coast ports in the State of California and the port of New York.

Relative to certain questions asked J. B. Smith herein [2121—2052] on cross-examination by Mr. M. I. Sullivan and found on pages 4229 and 4230, Volume 38 of the transcript of the reporter's notes taken on the trial hereof, affiant states that at no time when the steamer "Aztec," of which he was chief engineer, was being loaded with coal from the barge "Melrose," or from any other barge, did he, or any assistant engineer of said steamer in his hear-



ing, or to his knowledge, complain about the quality of the coal that was being put into said steamer, and that Eddie Powers did not, as the result of any such complaint, bring any other barge alongside of said steamer, nor was any attempt made by him, or anyone else connected with the Western Fuel Company, to make affiant, or any engineer of said steamer, believe that said steamer was getting a better quality of coal than that contained on any other barge.

Affiant further states that neither he, nor any engineer of said steamer in his hearing, or to his knowledge, condemned any coal that was brought alongside of, or attempted to be loaded into, said steamer "Aztec" by Western Fuel Company as being composed of Telegraph Hill rocks, or anything of that character, or as being of any inferior grade or quality; that affiant never, either when acting as chief engineer of said steamer "Aztec," or on any other occasion, stated that the coal was good for nothing, or that it was all rocks, or made any statement of similar import, nor did said Eddie Powers, nor anyone else connected with said Western Fuel Company, succeed in getting coal discharged from the barge "Theobald," or from any other barge, into said steamer "Aztec" which coal was of the kind or quality referred to in the questions asked by Mr. Sullivan as aforesaid; and affiant further states that no such incident or event ever happened as that implied in the said questions put to defendant J. B. Smith as aforesaid. [2122—2053]

Affiant is positive of the correctness of the foregoing statement not only by reason of the fact that

he has an excellent memory, but also by reason of his previous experience in coal mines. In the year 1900 for some time affiant was master mechanic of the Iwsaquah Coal Company, in the State of Washington, where he was brought into contact with coal and became familiar with its properties, and affiant has acted as chief engineer of coal burning vessels for fully twenty-four years last past.

Affiant has been away from the City and County of San Francisco during the entire time occupied by the trial hereof, except for a few days in the month of December last past, and returned to this port from a voyage at sea on the night of March 9th, 1914.

WM. P. LINDLEY.

Subscribed and sworn to before me this 11th day of March, 1914.

[Seal]

A. M. DUNCAN,

Notary Public in and for the City and County of San Francisco, State of California. [2123—2054]

**[Affidavit of William Chisholm, Dated March 18, 1914.]**

[Title of Court and Cause.]

State and Northern District of California,  
City and County of San Francisco,—ss.

William Chisholm, being first duly sworn, deposes and says:

That he is and has been for seven years last past marine superintendent of the Pacific Mail Steamship Company, and as such has his office at Pier 42 in said City and County of San Francisco.

That during the time above mentioned it was cus-

tomary for the Western Fuel Company, after the coaling of any steamer of said Pacific Mail Steamship Company had been completed, to furnish to said Steamship Company a certificate reciting the amount of coal furnished to said steamer and the name of the barge or barges by which the same was supplied.

That within the past week Edwin Powers, who was formerly an assistant to Mr. Mills, the superintendent of the Western Fuel Company, called on affiant, together with Mr. Theodore Roche, with reference to obtaining information of record in the office of said Pacific Mail Steamship Company regarding the coaling of the Steamer "Aztec." Affiant and said Powers at that time and subsequently examined the certificates issued by the Western Fuel Company regarding the coaling of said steamer and the coaling of the steamer "Acapulco," also belonging to said Pacific Mail Steamship Company, which examination covered the period of time when W. P. Lindley was chief engineer thereof, and they found no certificate which showed that either of said steamers had been coaled by two different barges after any voyage.

Affiant stated to said Theodore Roche that further [2124—2055] information regarding the coaling of these steamers could be obtained from, and was contained in, the tally-books kept by Mr. Parke, the tally clerk of said steamship company, and that said tally-books were in the possession of the Government as a part of the records of said Pacific Mail Steamship Company, which had been obtained by the prosecution prior to the time when the trial of the

above-entitled cause was commenced.

To the best of affiant's recollection and belief there was no trouble or complaint regarding the furnishing of coal by said Western Fuel Company to said steamers.

WILLIAM CHISHOLM.

Subscribed and sworn to before me this 18th day of March, 1914.

[Seal]                      GENEVIEVE S. DONELIN,  
Notary Public in and for the City and County of San  
Francisco, State of California.

In response to the above-recited affidavits, introduced in evidence by the defendants, the following counter-affidavits were, within the time allowed by law therefor, duly filed in open court or served by the plaintiff upon the defendants and their attorneys and filed with the Court, and were offered and received in evidence, to wit: [2125—2056]

[**Affidavit of Thomas C. Maher, Dated March 13,  
1914.**]

*In the District Court of the United States, for the  
Northern District of California.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et als.,

Defendants.



State and Northern District of California,  
City and County of San Francisco,—ss.

Thomas C. Maher, having been first duly sworn,  
deposes and says:

I was one of the jurors impaneled to try the above-entitled action, and by whom said action was tried.

I have read the affidavit made herein by juror, J. H. Bromberger, verified on the 8th day of March, 1914, before Henry G. Tardy, Notary Public in and for the County of Alameda, State of California, to be used on defendants' motion for a new trial herein.

I have also read the affidavit made herein by the juror, Joseph Stackler, verified on the 8th day of March, 1914, before Henry G. Tardy, Notary Public in and for the County of Alameda, State of California, to be used on said defendants' motion for a new trial.

Said juror, J. H. Bromberger is mistaken in stating that the juror Fred Becker gave to him a copy of the Oakland "Tribune" containing a piece about the sugar case in the East [2126—2057] and appearing in that part of the "Tribune" written by The Knave. The paper referred to had been given by Mr. Becker to me. Subsequently Mr. Bromberger requested me to let him see the paper and I handed the paper to him. I do not recall the exact date upon which this transaction occurred but I do remember that it was during one morning prior to the noon recess of said court. During the noon recess of said day, and on Market street, Mr. Bromberger returned the paper to me and I placed it in my pocket. There-

after, and on the same day and before court convened for the afternoon session and while in the corridor of the Post Office Building connecting with said courtroom, I returned the paper to Mr. Becker without having read it and without making to the said Becker any comment thereon. At no time thereafter and prior to the termination of said trial did I again see said paper or any copy thereof.

At no time did I state to any of the jurors by whom the above-entitled action was tried, either in substance or effect, that the sugar company and the Western Fuel Company were big corporations and that all of these big corporations did business along the same lines, or that all of them gave commissions or contributions, or any commission, or contribution, or that the sugar case was a similar case only that one company was handling sugar and the other coal.

Not only was the above statement not made by me but no such statement, either in substance or effect was made in my presence or hearing by any other juror during the trial of said action.

I have also read the affidavit made herein on the 10th day of March, 1914, by the juror, Wm. Long, verified before Lottie M. Conklin, Notary Public in and for the County of Alameda, State [2127—2058] of California, to be used on defendants' motion for a new trial. At no time during the trial of said case did I state to a number of jurors, or to any juror, either in substance or effect, that in the sugar cases, or in any sugar case, they got one of the men involved but that this man kept his mouth shut and

they could not get the others, but that they convicted one of them.

I state positively and unequivocally that none of the newspaper articles relating to the trial of the above-entitled action, or to any of the parties or witnesses connected therewith, or commenting upon, or relating to any of the issues involved in said action, in any way affected or influenced my judgment in arriving at a verdict in said action.

The verdict of said jury, so far as I was concerned, was based entirely and exclusively upon the evidence introduced during said trial, the instructions given by the Court to the jury, and the observations made by me while inspecting a portion of the premises in the possession of the Western Fuel Company in company with the other jurors and Hon. Maurice T. Dooling, judge presiding upon the trial of said action.

THOMAS C. MAHER.

Subscribed and sworn to before me this 13th day of March, 1914.

LLOYD MACOMBER,

Notary Public in and for the City and County of San Francisco, State of California. [2128—2059]

[Affidavit of R. H. Gatley, Dated March 13, 1914.]

[Title of Court and Cause.]

State and Northern District of California,  
City and County of an Francisco,—ss.

R. H. Gatley, having been first duly sworn, deposes and says:

I was one of the jurors impaneled to try the above-

entitled action, and by whom said action was tried.

I state positively and unequivocally that none of the newspaper articles relating to the trial of the above-entitled action, or to any of the parties or witnesses connected therewith, or commenting upon, or relating to any of the issues involved in said action, in any way affected or influenced my judgment in arriving at a verdict in said action.

The verdict of said jury, so far as I was concerned, was based entirely and exclusively upon the evidence introduced during said trial, the instructions given by the Court to the jury, and the observations made by me while inspecting a portion of the premises in the possession of the Western Fuel Company in company with the other jurors and Hon. Maurice T. Dooling, judge presiding upon the trial of said action.

I have read the affidavit made herein by the juror, J. H. Bromberger, verified on the 8th day of March, 1914, before Henry G. Tardy, Notary Public in and for the County of Alameda, State of California, to be used on defendant's motion for a new trial herein. Mr. Bromberger is mistaken when he states that the article known as "The Knave," published in the Oakland "Tribune" under date of February 8th, 1914, was handed to me. At no time during the trial of said action was I shown, or did I read, said [2129—2060] article, or any portion thereof. Said article was not shown to me by Mr. Fred Becker, one of the jurors who tried said action, or by any other person, nor did said Fred Becker request me to read said article, nor did he say anything in my presence



or hearing concerning said article or the sugar case therein referred to, or that the only difference between the case referred to in said article and the above-entitled action was that one was sugar and the other coal.

At no time during the trial of said action did the juror, T. C. Maher, or any other juror, discuss with me, or in my presence or hearing, the American Sugar Refining Company case in New York, or any other sugar case.

R. H. GATLEY.

Subscribed and sworn to before me this 13th day of March, 1914.

[Seal]

LLOYD MACOMBER,

Notary Public in and for the City and County of San Francisco, State of California.

**[Affidavit of William Long, Dated March 13, 1914.]**

[Title of Court and Cause.]

State and Northern District of California,

County of Alameda,—ss.

Wm. Long, having been first duly sworn, deposes and says:

I was one of the jurors impaneled to try the above-entitled action, and by whom said action was tried.

I state positively and unequivocally that none of the newspaper articles relating to the trial of the above-entitled action, or to any of the parties or witnesses connected therewith, [2130—2061] or commenting upon, or relating to any of the issues involved in said action, in any way affected or influenced my judgment in arriving at a verdict in said action.

The verdict of said jury, so far as I was concerned, was based entirely and exclusively upon the evidence introduced during said trial, the instructions given by the Court to the jury, and the observations made by me while inspecting a portion of the premises in the possession of the Western Fuel Company in company with the other jurors and Hon. Maurice T. Dooling, judge presiding upon the trial of said action.

WILLIAM LONG.

Subscribed and sworn to before me this 13th day of March, 1914.

[Seal] W. F. KRÖLL,  
Notary Public in and for the County of Alameda,  
State of California.

**[Affidavit of William K. Beans, Dated March 13,  
1914.]**

[Title of Court and Cause.]  
State and Northern District of California,  
County of Santa Clara,—ss.

William K. Beans, having been first duly sworn, deposes and says:

I was one of the jurors impaneled to try the above-entitled action, and by whom said action was tried.

I state positively and unequivocally that none of the newspaper articles relating to the trial of the above-entitled action, or to any of the parties or witnesses connected therewith, [2131—2062] or commenting upon, or relating to any of the issues involved in said action, in any way affected or influenced my judgment in arriving at a verdict in said action.

The verdict of said jury, so far as I was concerned, was based entirely and exclusively upon the evidence introduced during said trial, the instructions given by the Court to the jury, and the observations made by me while inspecting a portion of the premises in the possession of the Western Fuel Company in company with the other jurors and Hon. Maurice T. Dooling, judge presiding upon the trial of said action, and on the discussion of the evidence, and instructions of the Court, by the jury after retiring to the jury-room.

WILLIAM K. BEANS.

Subscribed and sworn to before me this 13th day of March, 1914.

[Seal]

CHARLES J. CLARK,

Notary Public in and for the County of Santa Clara,  
State of California.

**[Affidavit of L. Ph. Bolander, Dated March 11, 1914.]**

[Title of Court and Cause.]

State and Northern District of California,  
City and County of San Francisco,—ss.

L. Ph. Bolander, having been first duly sworn, deposes and says:

I was one of the jurors impaneled to try the above-entitled action, and by whom said action was tried.

I have read the affidavit made herein by the juror, [2132—2063] J. H. Bromberger, verified on the 8th day of March, 1914, before Henry G. Tardy, Notary Public in and for the County of Alameda, State of California, to be used on defendant's motion for a new trial herein. Mr. Bromberger is mistaken

when he states that the article known as "The Knave," published in the Oakland "Tribune" under date of February 8th, 1914, was handed to me. At no time during the trial of said action was I shown, or did I read, said article, or any portion thereof. Said article was not shown to me by Mr. Fred Becker, one of the jurors who tried said action, or by any other person, nor did said Fred Becker request me to read said article, nor did he say anything in my presence or hearing concerning said article or the sugar case therein referred to, or that the only difference between the case referred in said article and the above-entitled action was that one was sugar and the other coal.

At no time during the trial of said action did the juror, T. C. Maher, or any other juror, discuss with me, or in my presence or hearing, the American Sugar Refining Company case in New York, or any other sugar case.

I state positively and unequivocally that none of the newspaper articles relating to the trial of the above-entitled action, or to any of the parties or witnesses connected therewith, or commenting upon, or relating to any of the issues involved in said action, in any way affected or influenced my judgment in arriving at a verdict in said action.

The verdict of said jury, so far as I was concerned, was based entirely and exclusively upon the evidence introduced during said trial, the instructions given by the Court to the jury, and the observations made by me while inspecting a portion of the premises in the possession of the Western Fuel Company in



[2133—2064] company with the other jurors and Hon. Maurice T. Dooling, judge presiding upon the trial of said action.

At no time during the trial of said action did the juror, Thomas E. Maher, or any other juror, state in my presence or hearing, in substance or effect, that the Sugar Company and the Western Fuel Company were big corporations, and that these big corporations did business along the same lines, or that all or any of them gave commissions or contributions, or that the sugar case was a similar case only one company was handling sugar and the other coal.

L. PH. BOLANDER.

Subscribed and sworn to before me this 11th day of March, 1914.

[Seal]

J. D. BROWN,

Notary Public in and for the City and County of San Francisco, State of California.

**[Affidavit of Edward Powers, Dated March 14, 1914.]**

[Title of Court and Cause.]

State and Northern District of California,  
City and County of San Francisco,—ss.

Edward Powers, having been first duly sworn, deposes and says:

I have read the affidavit made by W. P. Lindley, sworn to on the 11th day of March 1914 before A. M. Duncan, Notary Public in and for the City and County of San Francisco, State of California, to be used upon defendants' motion for a new trial herein.

[2134—2065]

For several years prior to the month of July, 1911,

I was in the employ of the Western Fuel Company as assistant to the defendant, F. C. Mills, who, during the whole of said period of time was Superintendent of Docks and Barges of said Western Fuel Company. While said defendant, F. C. Mills would be on a vacation or while he was sick and absent from his said business, I would act in his place and discharge the duties which would ordinarily be performed by said F. C. Mills, and upon said occasions would report directly to the defendant, James B. Smith.

Upon an occasion while I was acting in the place and stead of said defendant F. C. Mills, said defendant Mills being absent from his business because of being on a vacation, or by reason of illness, I was required to discharge coal into the bunkers of the steamship "Aztec" to be used by it for fuel. At that time, to the best of my recollection, said steamship "Aztec" was lying on the north side of Pier No. 41. In order to coal said "Aztec" I had the barge "Melrose" placed along side of said "Aztec" and started to discharge coal from said "Melrose" into one of her bunkers. While said "Aztec" was being so coaled by said barge "Melrose" said W. P. Lindley, who was then and there the Chief Engineer upon said "Aztec" complained to me about the quality of said coal and when I joked with him about it, he asserted that the barge was full of Telegraph Hill rocks. I finally told him that he would have to take the matter up with Mr. Chisholm, who was then the Marine Superintendent of the Pacific Mail

Steamship Company, the company which was operating said "Aztec."

My recollection is that I accompanied him to Mr. Chisholm's office, but as to this I am not certain. I know, however, that I did meet Mr. Chisholm with said W. F. Lindley in connection with said complaint. [2135—2066]

Mr. Chisholm telephoned to one of the officials of the Pacific Mail Steamship Company, whom I believe to be Mr. Adolph J. Frey, and I telephoned to the defendant, James B. Smith, who informed me that he would ring up the office of the Pacific Mail Steamship Company. Finally the defendant, James B. Smith came down to the dock and with myself went aboard the barge and examined the coal. As a result of said examination it was finally agreed that the "Melrose" should be removed and the "Theobold" which was then lying on the south side of Pier 44, should be brought alongside of the "Aztec," and said "Aztec" should be coaled with the coal contained on the "Theobold." At said time the coal upon said "Melrose" was the same kind of coal as was upon said "Theobold," but it was represented that the coal upon the "Theobold," was a better quality coal.

Subsequently, and on the same day the "Melrose" was removed and the barge "Theobold" containing the same kind of coal as that in the "Melrose" was substituted in her place. The steamship "Aztec" thereupon completed her coaling from the coal located upon said barge "Theobold."

Affiant further states that during the month of

January 1914 and while affiant was in attendance upon the above-entitled court as a witness, having been served with a subpoena issued at the request of the Government, he met said W. P. Lindley in the corridor of the Postoffice Building, adjacent to, and connecting with the courtroom in which the trial of said action was in progress. At said time said W. P. Lindley had just left said courtroom.

I desire to state, however, that said occasion was some time prior to the time said defendant, James B. Smith, [2136—2067] was called to the stand, or testified as a witness in said action.

EDWARD A. POWERS.

Subscribed and sworn to before me this 14th day of March, 1914.

[Seal]

J. A. SCHAERTZER.

Deputy Clerk U. S. District Court, Northern District of California.

[Affidavit of W. H. Tidwell, Dated March 13, 1914.]

[Title of Court and Cause.]

State and Northern District of California,

City and County of San Francisco,—ss.

W. H. Tidwell, having been first duly sworn, deposes and says:

I am, and for several years last past have been a special agent of the United States Treasury Department, and as such special agent have had personal charge of the investigation into the frauds committed against the United States by the Western Fuel Company and certain of its officers and employees, which resulted in the finding and filing by the Federal



Grand Jury of the indictment which was and is the foundation for the above-entitled action.

As such special agent I attended the trial of said action and was present in court, with but very few exceptions, throughout the entire trial of said action.

Upon a number of occasions during said trial, before court would convene, some of the jurors who had been impaneled to try and who were engaged in trying said action, read newspapers. Upon said occasions said jurors so reading said newspapers would be located in the corridor of the United States [2137—2068] Postoffice Building, which was situated just outside of and which connected with the courtroom in which the sessions of said court were held. The fact that said jurors upon said occasions were so reading said newspapers was, of course, apparent to all persons passing through said corridor and into said courtroom at the time said jurors were so located in said corridor reading said newspapers.

During the examination of some of the jurors touching their qualifications to act as jurors upon the trial of said action, they were questioned by Mr. Stanley Moore, one of the attorneys for the defendants herein, concerning their knowledge of certain articles relating to the above-entitled case, which had been published in certain newspapers prior to the commencement of the trial of said action. Said Mr. Stanley Moore also interrogated some of the proposed jurors, for the purpose of ascertaining from them to what newspapers they subscribed and what newspapers they read.

I have examined the affidavit made herein by El-

liott Johnson, to which are attached articles, items and editorials published from time to time in the San Francisco "Examiner"; also the affidavit made by said Elliott Johnson, to which are attached articles, items and editorials published from time to time in the San Francisco "Bulletin." Practically all of said newspaper articles, items and editorials were seen and read by me about the dates upon which they appeared in said respective newspapers.

Upon and according to my information and belief, the fact that said articles, items and editorials were so published in said respective newspapers was known by the defendants in this action, and by the various attorneys representing said defendants, on or about the date upon which each of said articles, [2138—2069] items and editorials were so published in said respective newspapers. Upon and according to my information and belief, said defendants and their said attorneys knew, prior to the termination of the trial of said action, that all of said newspaper articles, items and editorials had been so published, and were familiar with the matters set forth in each of said articles, items and editorials.

At no time during the trial of the above-entitled action did any of the said defendants, or the attorneys for said defendants, or any of them request the above-entitled Court, or Honorable Maurice T. Dooling, Judge therein presiding, to instruct, charge or admonish said jury not to read any item, article or editorial that might appear or be published in any newspaper regarding said action, or any of the issues involved therein, or any of the parties thereto, or

any of the witnesses that were or might be called upon the trial of said action, or bearing or commenting upon the subject matter of said action; nor did said defendants, or any of them, or any of their counsel, at any time during said trial or at the conclusion thereof, request said Court or said Hon. Maurice T. Dooling to instruct, charge or admonish said jury not to permit themselves to be influenced by any article, item or editorial that might have been printed in any newspaper, or that might have been read by them or called to their attention.

W. H. TIDWELL.

Subscribed and sworn to before me this 13th day of March, 1914.

[Seal]

LLOYD MACOMBER.

Notary Public in and for the City and County of San Francisco, State of California. [2139—2070]

[Affidavit of Fred Becker, Dated March 10, 1914.]

[Title of Court and Cause.]

State and Northern District of California,  
County of Alameda,—ss.

Fred Becker, having been first duly sworn, deposes and says:

I was one of the jurors impaneled to try the above-entitled action, and by whom said action was tried.

I have read the affidavit dated March 6th, 1914, made by William K. Beans, who was also one of said jurors impaneled to try said action, and by whom said action was tried.

The verdict of the jury in said action was rendered

on the night of the 17th day of February, 1914. On or about the 9th day of February, 1914, I did hand to affiant a newspaper article *article* to read, which newspaper article referred to the American Sugar Refining case, in New York. It is not true, however, that said newspaper contained a series of articles, or any article, distinctly or at all hostile to the defendants in the above-entitled action, or any of them, or that said article commented in any manner, shape or form on the defense of the defendants, or any of them, in this case, or likened this case to said American Sugar Refining Company case in New York, or to any other case.

In each Sunday edition of the Oakland "Tribune," a newspaper printed and published in the City of Oakland, County of Alameda, State of California, appears an article entitled, "The Knave," in which article reference is made to events occurring in San Francisco and elsewhere. In the Oakland "Tribune" published on Sunday morning, February 8th, 1914, appeared one of said articles entitled "The Knave," the whole of which article was and is as follows:  
[2140—2071]

(There was here inserted in Mr. Becker's affidavit all of said article entitled, "The Knave," but the only portion thereof bearing any relation to this cause, or which defendants claim might have had any effect upon the minds of the jurors in deciding the same, was and is as follows, the other parts of said article being wholly irrelevant and devoted to a discussion of other and disconnected topics:)



## “RECALLS SUGAR FRAUD HISTORY.

Winfred T. Denison, the new Secretary of the Interior for the Philippines, recalled some sugar fraud history in the East in his address at the Palace a week ago before the Commonwealth Club. The suit was against the Havemeyer sugar trust for sugar weighing frauds. Denison acted in this famous case as Assistant United States Attorney-General. By manipulating the scales, it was shown the trust defrauded the Government in ten years out of \$4,500,000 in duties. As a result of the suit, it had to pay back this large sum to Uncle Sam. Denison said this and other evils were due to the ‘spoils system.’ The trust gave regular contributions to both parties and expected a tenfold return one way or another. The new Philippine official did not go into the details of the fraud suit, but if I recall correctly one of the men he sent to the penitentiary at Atlanta for two years was Oliver Spitzer, who had been the superintendent of docks for the American Sugar Refining Company, commonly alluded to as the trust. After he got out Spitzer admitted the steel springs used to manipulate the scales on the dock were his invention. He said he had not confessed at his trial for two reasons. He thought nothing could happen to the trust, believing it so strong the Government could do nothing with it. He also remarked:

‘I was advised to confess. I said the only confession I can make will carry me into a cemetery.’

‘You are referring to one of the trust magnates,’ asked the lawyer.

Spitzer said yes.

THE KNAVE.” [2141—2072]

I now reside, and for many years last past have resided in the City of Oakland, County of Alameda, State aforesaid.

Daily during the trial of the above-entitled action, in traveling from the City of Oakland to the City and County of San Francisco where said trial was in progress and where the above-entitled court held and still holds its session, I was accustomed to take with me and read daily newspapers, among which was the said Oakland "Tribune," for which newspaper I am now, and for many years last past have been a subscriber.

On the morning of February 9th, 1914, or February 19th, 1914, I had with me that portion of said Sunday Edition of said Oakland "Tribune" of February 8th, 1914, entitled "The Knave," the whole of which article I had read. While outside of the courtroom on the morning of said 9th or 10th days of February, 1914, I did call the attention of said William K. Beans to said article and gave it to him to read. At no time did I give or show said article to any of the other jurors engaged in the trial of said action, excepting Juror Maher. Said newspaper article was the only article which I ever gave to said William K. Beans to read, or to which I called his attention during said trial. Said William K. Beans is in error when he states that the following morning he returned said newspaper article to me. Said newspaper article was never returned to me, nor was it afterwards seen by me until within the past few days when my attention was directed to it in connection with the making of this affidavit.

At the conclusion of the session of said court held the day after I gave said article to said William K. Beans, said William K. Beans accompanied me across the San Francisco Bay, he going to Berkeley and I going to my said home. While on said trip said William K. Beans apologized to me for not having returned [2142—2073] said newspaper, stating that he would return it to me the next morning. I told him that he need not mind because I had read the article and did not care anything further about it. As before stated, the newspaper article was never returned to me.

At no time during the trial of said action did I state to said William K. Beans that the sugar people were crooked and that the Western Fuel people were operating along the same lines.

I state positively and unequivocally that none of the newspaper articles relating to the trial of the above-entitled action, or to any of the parties or witnesses connected therewith, or commenting upon or relating to any of the issues involved in said action, or said article above referred to, in any way affected or influenced my judgment in arriving at a verdict in said action. The verdict of said jury, so far as I was concerned, was based entirely and exclusively upon the evidence introduced during said trial, the instructions given by the Court to the jury, and the observations made by me while inspecting a portion of the premises in the possession of the Western Fuel Company, in company with the other jurors, and Hon. Maurice T. Dooling, Judge presiding on the trial of said action.

FRED BECKER.

Subscribed and sworn to before me this 10th day of March, 1914.

[Seal]

LLOYD MACOMBER,

Notary Public in and for the City and County of  
San Francisco, State of California. [2143—  
2074]

And the aforesaid motion for a new trial and for an order of the Court vacating the verdict of the jury herein having been argued by counsel for the defendants and for the plaintiff, respectively, the Court denied said motion, and, thereupon, rendered its judgment and sentence upon the defendants, James B. Smith, F. C. Mills and E. H. Mayer, and upon each of them, and made its order granting to said defendants, and to each of them, thirty days within which to prepare and serve upon the plaintiff a draft of their, and his, proposed bill of exceptions upon writ of error herein, which time was thereafter extended by successive stipulations of the parties and orders of the Court to and including the 19th day of January, 1915.

Concerning the embodiment of exhibits in and as a part of this Bill of Exceptions, the respective parties hereto have stipulated and the Court has made its order as follows, to wit:

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.



**Stipulation and Order Transmitting Certain Exhibits and a Certain Affidavit to the United States Circuit Court of Appeals for the Ninth Circuit and Making the Same a Part of the Bill of Exceptions Without Incorporation at Large Therein. [2144—2075]**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that all United States' exhibits and all defendants' exhibits and that certain affidavit of Elliott Johnson subscribed and sworn to before Notary Public C. B. Sessions on the 19th day of March, 1914, and introduced in evidence upon defendants' motion for a new trial hereof and containing that certain cartoon from the "San Francisco Bulletin" entitled, "Breaking Even—If the Consumers Ever Get a Chance to Sell a Ton of Coal to the Coal Man," may be transmitted in the original by the Clerk of the above-entitled Court to the Circuit Court of Appeals for the Ninth Circuit, and that said exhibits and said affidavit may be included as and deemed a part of the Bill of Exceptions upon Writ of Error herein, with the same effect in all respects as though incorporated at large in said Bill of Exceptions.

Dated at San Francisco, California, this 19th day of January, 1915.

THEO. J. ROCHE,  
Assistant to the Attorney General of the United States. [2145—2076]

PETER F. DUNNE,  
STANLEY MOORE,  
Attorneys for Defendants, James B. Smith, F. C. Mills and E. H. Mayer.

Now, on this day, for good cause shown and pursuant to the above and foregoing stipulation, the Clerk of the above-entitled Court is hereby directed and ordered to transmit all of the United States' exhibits and all of the defendants' exhibits, and that certain affidavit of one Elliott Johnson specified in said above and foregoing stipulation, in the original, to the United States Circuit Court of Appeals for the Ninth Circuit;

AND IT IS HEREBY ORDERED that said exhibits and said affidavit shall be included as and deemed a part of the Bill of Exceptions upon Writ of Error herein with the same effect in all respects as though incorporated at large in said Bill of Exceptions.

Dated at San Francisco, California, this 19th day of January, 1915.

M. T. DOOLING,

Judge. [2146—2077]

The above and foregoing (including therein, also, the exhibits and affidavit provided for in the stipulation and order last above recited) contains all of the evidence of any and every character given, and all of the proceedings had upon the entire trial of this cause; and all of the instructions of the Court to the Jury; and all of the proceedings had and all of the evidence given upon defendants' motion for a new trial hereof; and all of the proceedings relating to the judgment and sentence pronounced and imposed upon the defendants herein, and upon each of them.

And, now, within the time allowed by law and the rules and orders of this Court, duly and regularly made in this behalf, the defendants, James B. Smith, F. C. Mills and E. H. Mayer, and each of them, hereby propose the above and foregoing as and for their Bill of Exceptions upon Writ of Error herein, and pray that the same be settled, allowed, signed and authenticated by this Court as in proper form and as conforming to the truth and as the true Bill of Exceptions herein, and that it be made a part of the record in this cause.

Dated at San Francisco, California, this 19th day of January, 1915.

PETER F. DUNNE,  
STANLEY MOORE,

Attorneys for Defendants, James B. Smith, F. C.  
Mills and E. H. Mayer. [2147—2078]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Notice of Presentation to Plaintiff of Defendants'  
Proposed Bill of Exceptions.**

To the United States of America, Plaintiff, and to  
Its Attorney, Theodore J. Roche, Esq., Assist-  
ant to the Attorney General of the United  
States:

You will please take notice that the above and foregoing constitutes and is the Proposed Bill of Exceptions of the defendants, James B. Smith, F. C. Mills and E. H. Mayer, and of each of them upon their and his Writ of Error in the above-entitled cause, and that said defendants and each of them will apply to the above-entitled court to settle, allow, sign and authenticate the same as in proper form and as conforming to the truth and as the true Bill of Exceptions herein, and to make it a part of the record in this cause.

Dated at San Francisco, California, this 15th day of October, 1914.

PETER F. DUNNE,  
STANLEY MOORE,

Attorneys for Defendants, James B. Smith, F. C. Mills and E. H. Mayer. [2148—2079]

Due and legal service of the above and foregoing Proposed Bill of Exceptions by copy is hereby admitted this 15 day of October, 1914.

THEO. J. ROCHE,  
Assistant to the Attorney General of the United  
States. [2149—2080]



*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation Re Bill of Exceptions.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the above and foregoing Proposed Bill of Exceptions upon Writ of Error herein has been presented within the time allowed by law and the rules and orders of this Court duly and regularly made in this behalf, and that the same is in proper form and conforms to the truth, and that it may be settled, allowed, signed and authenticated by this Court as the true Bill of Exceptions herein, and that it may be made a part of the record in this cause.

Dated at San Francisco, California, this 19th day of January, 1915.

THEO. J. ROCHE,

Assistant to the Attorney General of the United States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for Defendants James B. Smith, F. C. Mills and E. H. Mayer. [2150—2081]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Order Settling, Allowing, Signing and Authenticating Proposed Bill of Exceptions and Making the Same a Part of the Record.**

The above and foregoing Bill of Exceptions, duly proposed by the defendants, James B. Smith, F. C. Mills and E. H. Mayer, and each of them, and duly agreed upon by the respective parties hereto, having been presented to the Court within the time allowed and required by law and by the rules and orders of this Court duly and regularly made in that behalf, is hereby settled, allowed, signed and authenticated as in proper form and as conforming to the truth and as the true Bill of Exceptions herein, and is hereby made a part of the record in this cause.

Dated at San Francisco, California, this 19th day of January, 1915.

M. T. DOOLING,

Judge of the District Court of the United States for  
the Northern District of California.

[Endorsed]: Filed Jan. 19, 1915. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk.

Due service of the within Bill of Exceptions is hereby admitted this 15th day of October, 1914.

THEO. J. ROCHE,  
Spec. Asst. U. S. Atty. General. [2151—2082]

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**[Verdict as to James B. Smith.]**

*In the District Court of the United States, in and for  
the Northern District of California, First Division.*

No. 5233.

THE UNITED STATES OF AMERICA

vs.

JAMES B. SMITH et al.,

We, the jury, find James B. Smith, the defendant at the bar, guilty as charged.

THOMAS C. MAHER,  
Foreman.

[Endorsed]: Filed Feb. 18th, 1914, at 12 o'clock and 05 minutes A. M. W. B. Maling, Clerk. By Francis Krull, Deputy Clerk. [2152]

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**[Verdict as to F. C. Mills.]**

*In the District Court of the United States, in and for  
the Northern District of California, First Division.*

No. 5233.

THE UNITED STATES OF AMERICA

vs.

F. C. MILLS et al.

We, the jury, find F. C. Mills, the defendant at the bar, guilty as charged.

THOMAS C. MAHER,  
Foreman.

[Endorsed]: Filed Feb. 18th, 1914, at 12 o'clock and 05 minutes, A. M. W. B. Maling, Clerk. By Francis Krull, Deputy Clerk. [2153]

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[Verdict as to E. H. Mayer.]

*In the District Court of the United States, in and for  
the Northern District of California, First Division.*

No. 5233.

THE UNITED STATES OF AMERICA

vs.

E. H. MAYER et al.

We, the jury, find E. H. Mayer, the defendant at the bar, guilty as charged.

THOMAS C. MAHER,  
Foreman.

[Endorsed]: Filed Feb. 18th, 1914, at 12 o'clock and 05 minutes A. M. W. B. Maling, Clerk. By Francis Krull, Deputy Clerk. [2154]



*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN L. HOWARD et al.,

Defendants.

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**(Motion for Order Vacating Verdict of Jury and  
Granting New Trial.)**

Defendants herein, James B. Smith, Frederick C. Mills and Edward H. Mayer, do hereby move this Honorable Court for an order vacating the verdict of the jury herein, and granting to these defendants, and each of them, a new trial for the following causes, and each of them, materially affecting the substantial rights of these defendants and each of them:

1. Said verdict was contrary to the evidence adduced upon the trial hereof.

2. Said evidence was insufficient to justify said verdict.

3. Said verdict was contrary to law.

4. During the course of the trial hereof the jury received evidence out of court other than that resulting from a [2155] view of the premises involved herein.

5. The jury was guilty of misconduct by which a fair and due consideration of the above-entitled cause was prevented.

6. The Court erred in deciding questions of law arising during the course of the trial hereof, which errors were duly excepted to.

7. Counsel for the government was guilty of misconduct during the course of the trial hereof and upon the argument of said cause to the jury.

This motion is made upon the minutes of the Court, except as to the fourth and fifth grounds of motion, as to which this motion is made upon oral testimony and upon affidavits to be hereafter served and filed.

Dated: San Francisco, California, February 28, 1914.

McCUTCHEN, OLNEY & WILLARD,  
STANLEY MOORE,  
A. P. BLACK and  
SAMUEL KNIGHT,

Attorneys for Defendants.

[Endorsed]: Filed Feb. 28, 1914. W. B. Maling,  
Clerk. By Francis Krull, Deputy Clerk. [2156]

**[Order Denying Motion for New Trial, etc.]**

At a stated term of the District Court of the United States of America for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 19th day of March, in the year of our Lord, one thousand nine hundred and fourteen. Present: The Honorable M. T. DOOLING, Judge.

#5233.

UNITED STATES

vs.

JAMES B. SMITH et al.

**Judgment.**

The defendants, James B. Smith, F. C. Mills and E. H. Mayer, each being present in open court with their counsel, and counsel for the Government being present, the further argument on the motion for a new trial and for an order vacating the verdict of the jury, was resumed, and after hearing argument by Samuel Knight, Esqr., and E. J. McCutchen, Esqr., for defendants, and Theo. J. Roche, Esqr., and Matt I. Sullivan, Esqr., for the United States, and E. J. McCutchen in closing for the defendants, by the Court ordered that said motion be, and the same is hereby, denied, to which ruling the defendants then and there duly entered their exception. The said defendants being fully informed by the Court of the nature of the indictment herein against *the*, of their arraignment and pleas of not guilty, and the verdict

of the jury finding each of said defendants guilty, and no sufficient cause being shown or appearing to the Court why judgment should not be pronounced against them at this time, now here by the Court ordered: That defendant James B. Smith be imprisoned for the term of eighteen months in the State Penitentiary at San Quentin, Marin County, California, and that [2157] he pay a fine of Five Thousand Dollars, for the offense of which he stands convicted.

Further ordered that defendant F. C. Mills be imprisoned for the term of eighteen months in the State Penitentiary at San Quentin, Marin County, California, for the offense of which he stands convicted.

Further ordered that defendant E. H. Mayer be imprisoned for the term of one year in the County Jail of Alameda County State of California, for the offense of which he stands convicted.

Further ordered that bail of defendants be fixed as follows, pending stay of execution herein: As to defendant Jas. B. Smith in the sum of \$10,000; as to defendant F. S. Mills in the sum of \$5,000; as to defendant E. H. Mayer in the sum of \$5,000.

Further ordered that execution of judgment herein be stayed for a period of thirty days, and that said defendants be, and they are hereby, granted thirty days to prepare and file bill of exceptions. [2158]



**[Judgment as to James B. Smith.]**

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

THE UNITED STATES OF AMERICA,

vs.

JAMES B. SMITH.

Convicted of a Conspiracy to Defraud the Government. Viol. Sec. 36, Crim. Code.

**JUDGMENT ON VERDICT OF GUILTY.**

Now, on this 19th day of March, A. D. 1914, the defendant James B. Smith, in his own proper person and with his counsel, Messrs. McCutchen, Olney & Willard, Samuel Knight, Stanley Moore and A. P. Black, Esqs., being present in open court, come Matt I. Sullivan and Theo. J. Roche, Esqs., Special Assistants to the Attorney General of the United States, and move the Court that judgment be pronounced in this cause; whereupon the defendant was duly informed by the Court of the nature of the indictment filed on the 27th day of February, A. D. 1913, charging him with the crime of conspiring to defraud the Government of the United States, in violation of Section 36, of the Criminal Code of the United States; of his arraignment and plea of not guilty; of his trial and the verdict of the jury on the 18th day of February, A. D. 1914, to wit: "We, the Jury, find James B. Smith, the defendant at the bar, Guilty as charged."

The defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for a new trial, and a motion to set aside the verdict of the jury; thereupon the Court rendered its judgment;

THAT WHEREAS, the said James B. Smith having been duly convicted in this Court of the crime of conspiring to defraud the [2159] Government of the United States.

IT IS THEREFORE ORDERED AND ADJUDGED that the said James B. Smith be imprisoned for the term of eighteen (18) months in the State Penitentiary at San Quentin, California, and that he pay a fine of \$5,000.

JUDGMENT ENTERED this 19th day of March A. D. 1914.

W. B. MALING,  
Clerk.

By C. W. Calbreath,  
Deputy Clerk.

Entered in Vol. 6, Judg. and Decrees, at page 38.  
[2160]

[Judgment as to F. C. Mills.]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

THE UNITED STATES OF AMERICA,

vs.

F. C. MILLS.

Convicted of a Conspiracy to Defraud the Government. Viol. Sec. 36, Crim. Code.

JUDGMENT ON VERDICT OF GUILTY.

Now on this 19th day of March, A. D. 1914, the defendant F. C. Mills, in his own proper person and with his counsel, Messrs. McCutcheon, Olney & Willard, Samuel Knight, Stanley Moore and A. P. Black, Esqs., being present in open court, come Matt I. Sullivan and Theo. J. Roche, Esqs., Special Assistants to the Attorney General of the United States, and move the Court that judgment be pronounced in this cause; whereupon the defendant was duly informed by the Court of the nature of the indictment filed on the 27th day of February, A. D. 1913, charging him with the crime of conspiring to defraud the Government of the United States, in violation of Section 36, of the Criminal Code of the United States; of his arraignment and plea of Not Guilty; of his trial and the verdict of the jury on the 18th day of February, A. D. 1914, to wit: "We, the Jury, find F. C. Mills, the defendant at the bar, Guilty as charged."

The defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for a new trial, and a motion to set aside the verdict of the jury; thereupon the Court rendered its judgment;

THAT WHEREAS, the said F. C. Mills, having been duly convicted in this court of the crime of conspiring to defraud the [2161] Government of the United States;

IT IS THEREFORE ORDERED AND ADJUDGED that the said F. C. Mills be imprisoned for the term of Eighteen (18) months in the State Penitentiary at San Quentin, California.

Judgment entered this 19th day of March, A. D. 1914.

W. B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk.

Entered in Vol. 6, Judg. and Decrees, at page 39.  
[2162]



[Judgment as to E. H. Mayer.]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

THE UNITED STATES OF AMERICA,

vs.

E. H. MAYER.

Convicted of a Conspiracy to Defraud the  
Government. Viol. Sec. 36, Crim. Code.

JUDGMENT ON VERDICT OF GUILTY.

Now, on this 19th day of March, A. D. 1914, the defendant E. H. Mayer, in his own proper person and with his counsel, Messrs. McCutcheon, Olney & Willard, Samuel Knight, Stanley Moore and A. P. Black, Esqs., being present in open court, come Matt I. Sullivan and Theo J. Roche, Esqs., Special Assistants to the Attorney General of the United States, and move the Court that judgment be pronounced in this cause; whereupon the defendant was duly informed by the Court of the nature of the indictment filed on the 27th day of February, A. D. 1913, charging him with the crime of conspiring to defraud the Government of the United States, in violation of Section 36, of the Criminal Code of the United States; of his arraignment and plea of Not Guilty; of his trial and the verdict of the jury on the 18th day of February, A. D. 1914, to wit: "We, the Jury, find E. H. Mayer, the defendant at the

bar, Guilty as charged.”

The defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for a new trial, and a motion to set aside the verdict of the jury; thereupon the Court rendered its judgment;

THAT WHEREAS, the said E. H. Mayer having been duly convicted in this court of the crime of conspiring to defraud the [2163] Government of the United States;

IT IS THEREFORE ORDERED AND ADJUDGED that the said E. H. Mayer be imprisoned for the term of One (1) year in the Alameda County Jail, Alameda County, California.

JUDGMENT ENTERED this 19th day of March, A. D. 1914.

W. B. MALING,  
Clerk.

By C. W. Calbreath,  
Deputy Clerk.

Entered in Vol. 6, Judg. and Decrees, at page 40.  
[2164]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN L. HOWARD et al.,

Defendants,

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Petition for Writ of Error.**

Now comes James B. Smith, F. C. Mills and E. H. Mayer, defendants herein, and bring this their Petition for a Writ of Error to the District Court of the United States, for the Northern District of California, and respectfully show:

That on the 19th day of March, 1914, there was rendered and entered in the above-entitled court a judgment and sentence against them, the above-named defendants, and each of them, whereby defendant James B. Smith, was adjudged and [2165] sentenced to be imprisoned for the term of eighteen (18) months in the State Penitentiary at San Quentin, Marin County, California, and to pay a fine of

five thousand (5,000) dollars; and whereby defendant, F. C. Mills, was adjudged and sentenced to be imprisoned for the term of eighteen (18) months in the State Penitentiary at San Quentin, Marin County, California; and whereby defendant, E. H. Mayer, was adjudged and sentenced to be imprisoned for the term of one (1) year in the County Jail of Alameda County, State of California, in which judgment and sentence against said defendants, and each of them, and in the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of said above-named defendants, and of each of them, all of which will more in detail appear from the Assignment of Errors which is filed with this Petition.

WHEREFORE, said above-named defendants, and each of them, pray that a Writ of Error may issue in their behalf out of the United States Circuit Court of Appeals, for the Ninth Circuit, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals, and that all further proceedings in the above-entitled District Court be suspended, stayed and superseded, and that sentence and execution herein be stayed until the final disposition of said Writ of [2166] Errors in said United States Circuit Court of Appeals, for the Ninth Circuit.



Dated: May 18th, 1914.

McCUTCHEN, OLNEY & WILLARD,  
STANLEY MOORE,  
A. P. BLACK,  
SAMUEL KNIGHT,

Attorneys for Defendants James B. Smith, F. C.  
Mills and E. H. Mayer.

[Endorsed]: Filed May 18, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2167]

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*In the District Court of the United States, for the  
Northern District of California, First Divi-  
sion.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN L. HOWARD et al.,

Defendants,

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Assignment of Errors.**

Now come defendants, James B. Smith, F. C. Mills  
and E. H. Mayer, in the above-entitled cause, and,  
in connection with their Petition for a Writ of Error

herein, make the following Assignment of Errors which they aver occurred upon the trial of said cause, to wit:

I.

The Court erred in overruling the motion of said defendants, and each of them, for an order dismissing the indictment against them, and each of them, and for an order directing the jury to return a verdict of not guilty in respect to all and each of them.

To which ruling of the Court said defendants then and there duly and regularly excepted.

II.

The Court erred in rendering judgment and imposing sentence [2168] upon defendant, James B. Smith, for the reason that said judgment and sentence and the verdict of the jury herein upon which said judgment and sentence were based were not supported by the evidence introduced herein.

III.

The Court erred in rendering judgment and imposing sentence upon defendant, F. C. Mills, for the reason that said judgment and sentence and the verdict of the jury herein upon which said judgment and sentence were based were not supported by the evidence introduced herein.

IV.

The Court erred in rendering judgment and imposing sentence upon defendant, E. H. Mayer, for the reason that said judgment and sentence and the verdict of the jury herein upon which said judgment and sentence were based were not supported by the evidence introduced herein.

## V.

The Court erred in permitting the Special Assistants to the Attorney General of the United States, counsel for the plaintiff in this cause, to make the following statements in the course of, and as a part of, their arguments to, and in the presence of, the jury, and in omitting and neglecting to instruct the jury to disregard said following statements, to wit:

(Excerpts from argument of Theodore J. Roche, Esq.)

Gentlemen of the jury, we represent the majesty of the law of these United States, and it is proper for me at this time to tell you exactly what the attitude of this Government is. The Government in this case tells you, gentlemen of the jury, that upon the testimony that has come in during the trial of this case there cannot be any question at all about [2169] the guilt of these defendants, and the Government in this case insists upon the testimony that has come before you, gentlemen of the jury, that you in the performance of your duty bring in a verdict of guilty and we say to you, gentlemen of the jury, without hesitation, that if upon the testimony which has been taken an acquittal should result, that that result will unquestionably be an absolute miscarriage of justice; and that it will be futile for the Government in a case such as this at any time in the future to attempt to convict the officials of a wealthy corporation for defrauding other concerns which are defrauded by reason of the frauds committed against the Government itself. \* \* \*

During the month of August, 1912, Dave Powers,

who had at that time just left the County Jail in Alameda, where he had expiated an offense similar in kind to one of the offenses committed by the officials of this company, only he was not backed up by a million dollars worth of business, went down to one of the officials of the Pacific Mail Steamship, etc.

\* \* \*

David Powers finally went down to one of his friends who was connected with one of the newspapers in San Francisco, told him what his situation was, told him then, gentlemen of the jury, some of the facts which have been put in evidence, and which by the way at that time was a public scandal, smelling to the high Heavens, and finally was advised by him, when he told him that he was in fear of being brought before the Grand Jury, that is was his duty to go down and tell the United States Government officials exactly what he knew about these frauds.

\* \* \* [2170]

Why the prosecution in this case has no axe to grind and it has no desire to prosecute innocent individuals. The Government in this case concluded that the men were guilty and hence this prosecution. This great Government of ours, your Government as well as mine, gentlemen of the jury, is not in the business of suborning witnesses to commit perjury, or trying to bring about the conviction of innocent officials as a result of or upon perjured testimony.

\* \* \*

Now it has again been said, gentlemen of the jury, that the percentage of shortage and overage is so small that the Western Fuel Company would not at-



tempt to defraud these overages. I say to you, gentlemen of the jury, that this general percentage, the annual percentage, as well as the general percentage, is not a controlling factor in this case. \* \* \*

It has been claimed here time and time and time again that the amount out of which the government claims it was defrauded amounts to only \$45,000 or thereabouts; \$45,000 to this million dollars corporation counsel for the defendants say is a very small amount of money. Why, this immense corporation, gentlemen, doing more than a million dollars of business a year in foreign coal alone, paying its dividends of 10 per cent a year, having a plant, gentlemen of the jury, which still is of the same value, if not a greater value at this time than it had at the time it was purchased, although according to the financial reports received here in evidence, they have marked off each year 25 cents a ton for depreciation, they say that this great big corporation would not stoop so low as to defraud the United States Government out of \$45,000. Why, I am willing, gentlemen of the jury, to admit that the Western Fuel [2171] Company did not, nor did any of its officials enter into this conspiracy and do those things for the sole and exclusive purpose of defrauding the United States Government out of \$45,000. But is there anyone within the range of my voice that believes for a single moment, that that was the purpose, the sole purpose, the exclusive purpose of this conspiracy. Why, don't you know, gentlemen of the jury, that every time they defrauded the United States Government out of 65 cents representing drawbacks, or 45 cents under

the last Tariff Act, they were defrauding the Pacific Mail Company and other companies running American vessels foreign bound out of the value of a ton of coal? Don't you know, gentlemen of the jury, that their defrauding of the United States was only a part of the conspiracy into which the officials of the Western Fuel Company entered? Don't you know, gentlemen of the jury, that the object of this conspiracy, gigantic as it was, was not alone to defraud the United States Government, but was for the purpose of defrauding these shipowners out of the value of coal with which they were charged, and which in fact they never received? Don't you know, gentlemen of the jury, that it was for the purpose of defrauding the United States Government out of coal which was supposed to be laden upon our transports, transports, gentlemen of the jury, engaged in protecting the lives and property of these United States, and upon other Government vessels? Don't you know that the conspiracy was laid for the purpose, among other things, of defrauding the United States Government out of import duties and defrauding the United States Government out of drawbacks, and likewise, gentlemen of the jury, of defrauding shipowners [2172] out of the freight to which they were otherwise entitled, and likewise, gentlemen of the jury of defrauding the consignees of cargoes purchased and taken over by the Western Fuel Company, out of the value of coal represented by the shortage between the bill of lading and invoice weights and the out-turn weights, that \$45,000, gentlemen of the jury, is only an insignificant amount

compared to the amount realized by the officials of the Western Fuel Company as a result of the fraud perpetrated by them and by it against the United States Government and these other officials. Why, I can add up, gentlemen of the jury, and if I had time I would do it, moneys which, under the testimony in this case were illegally exacted by the Western Fuel Company, amounting upwards of three-quarters of a million dollars. And it is that three-quarters of a million dollars, gentlemen of the jury, that permitted the Western Fuel Company to pay 10 per cent dividends per year, and still at the end of 8 or 9 years, when they had practically paid for this plant, retain, gentlemen of the jury, a plant which today is worth just as much if not a great deal more than the amount for which it was originally purchased. So you see, gentlemen of the jury, that this small insignificant amount of \$45,000 a fabulous amount to a great many of us, but a very small amount to the Western Fuel Company and its active Vice-president and Manager, etc. \* \* \*

Don't you know, gentlemen of the jury, that this cry of big business, every time a Government official treads upon the toes of one of these officials, or employees of one of these big barge corporations,—has it come to pass, gentlemen of the jury, that an official connected with one of these large corporations can come into court and say “it is true that I [2173] have committed a fraud, it is true that I have sold 5 per cent more coal than the coal which we have received, but because that coal is only a small proportion of the great volume of business which we have

done we ought to be immune from punishment," and in fact immune from indictment? Has it come to pass, gentlemen of the jury, that a man in the position of the defendant James B. Smith can come into court, because he is connected with a large corporation doing a million dollars worth of business a year and make a defense of that kind, when at the same time if another man was not backed up by a million dollar corporation, by friends, by social connections, by affluence, he would have to come into court and plead guilty to this? Has the time arrived in this country, gentlemen of the jury, when there is one law for the rich and another law for the poor? Why, during the trial of this case, gentlemen of the jury, upon at least several of the occasions you yourself have witnessed unfortunates unprotected by half a dozen attorneys, come before his Honor upon the bench and plead guilty to conspiring against the laws of the United States, either by importing a small quantity of opium into this country, 5 or 10 or 15 lbs., or by attempting to counterfeit some of the moneys coined by the United States Government? Is it true that if one of these men had been doing a million dollars worth of business or was an employee of a million dollar corporation, that he could come into this court and say, "it is true that I have done these things but I am not guilty because the value of the opium smuggled into this country or the money value of the coins which it is claimed that I counterfeit represent only a small percentage of the great volume of business that I have [2174] done"?

Dave Powers, gentlemen of the jury, was sent to



the County Jail of Alameda County for bringing into the United States a small quantity of opium upon which either the duty had not been paid or the introduction into the United States of which was at that time prohibited; but of course, gentlemen of the jury, he was not a million dollar financier. He did not have a million dollar corporation behind him; he did not have million dollar friends to intercede for him; and therefore of course when he was brought into this courtroom he had to plead guilty. \* \* \*

It is your sworn duty to return a verdict of guilty in this case irrespective of what the volume of business has been which from time to time has been done by the Western Fuel Company, and irrespective too, gentlemen of the jury, that some of the defendants in this case may be connected with a million dollar corporation, or that the amount out of which the United States Government has been defrauded represents only a small percentage of the volume of business done from time to time by this large corporation.

\* \* \*

So, in 1904, within one year after this great corporation commenced doing this million dollar volume of business, we find it ripping up and removing decking and planking, etc. \* \* \*

They themselves have admitted, Mr. Olney in an opening statement, and their paid advocates in the nature of experts on the stand, that you cannot have an overage exceeding 5 per cent, from these barges upon any legitimate theory. \* \* \* [2175]

The defendants in this case, not satisfied with bringing here the President of the Stanford Uni-

versity to testify as an expert, not satisfied with bringing here Professor Folsom who said the only thing he knew about coal was that it was black and it would burn, going away back East to Illinois and to Ohio for the purpose of bringing here experts at an enormous and fabulous salary, etc. \* \* \*

And I say to you in closing, gentlemen of the jury, just as I said to you in opening, that if there is any other verdict in this case excepting a verdict of guilty, and a verdict of guilty as to every defendant in this case, including the defendant Edward J. Smith, who did not testify concerning many facts attributed to him and which were within his knowledge, then I say to you, gentlemen of the jury, that the Government will conclude that a miscarriage of justice has followed. \* \* \*

(Excerpts from argument of Matt I. Sullivan, Esq.)

I was not at all surprised at the argument of the two gentlemen representing the defendants in this case. I have heard the same kind of argument many, many times during a period of over 30 years practice. It is the same kind of an argument that is always produced by counsel, well paid, representing wealthy and powerful clients. \* \* \*

As usual, when counsel represents a powerful or wealthy corporation, Mr. Moore and Mr. McCutchen appealed to the constitution and the laws of the country. They say that if you are influenced by the appeal of Mr. Roche, or the similar appeal of Mr. Sullivan, there is danger of the Government being undermined, there is danger of injustice being done.

Every [2176] time I have heard that argument during the last thirty years or more, I have become indignant, because that is the style of oratory always resorted to by counsel representing the character of clients involved in this case. They say the law is made for the rich and the poor; we admit it. They say that the law should be administered alike to the rich and the poor; we admit it. They say that if it is not so administered, the interests of our country will totter and crumple. That is the language of Mr. Moore. Now, gentlemen, I don't believe in making an appeal to any jury, or to any court to find any man guilty or to inflict a penalty upon him because he happens to be a man of wealth, a man of affluence, a man of social position. But I do say that before any court, or before any jury, no man, by reason of his wealth, or affluence or position in society should stand a better show of having a fairer trial than the poor man referred to by Mr. Moore, who may be a wandering fugitive from the mountains. \* \* \*

Now, gentlemen of the jury, here are defendants, four of them, now—originally seven, represented by seven of the leading lawyers of the State; admittedly this is a powerful and a wealthy corporation, a million dollar corporation, as stated by Mr. Roche, because the concern is capitalized for that amount.

\* \* \*

Now, gentlemen of the jury, that old, old chestnuttty argument was repeated yesterday, and will be repeated until the crack of doom; it has been repeated ever since I attended court; Don't, gentlemen of the jury, convict these men because they are wealthy,

don't convict them because they are powerful. That is their argument. \* \* \*

Now, gentlemen of the jury, it is about as difficult [2177] for a criminally rich man to enter the penitentiary against his will as it is for a loaded camel to pass through the eye of a needle, and in that respect, and that only, there appears to be a distinction between the penitentiary and heaven. The jails are full of these wandering fugitives, to use the language of Mr. Moore; the jails are full of defendants who have violated the law; full of criminals who were not able to employ seven of the ablest lawyers in the country; full of men who had not the means to secure counsel and who could bring experts thousands of miles from their place of occupation to hoodwink and fool a jury into believing that black was white, and that white was no color at all.

Now, gentlemen of the jury, I stand by everything that Mr. Roche stated in his opening argument. I will not on his behalf, or on behalf of the Government, recant a single word uttered by him. He expressed his true convictions, as I am now expressing my true convictions concerning the defense in this case, and the manner of the defense and the facts of the case. \* \* \*

But then, of course, they are corporation lawyers, they are honorable and high in their profession. Oh, they can do those things, but men like Roche and myself who have been battling all our lives for the cause of people not connected with corporations, are guilty of most reprehensible conduct because we pre-



sent the facts, the plain unvarnished facts to the jury.

Now, when a man on the payroll of a defendant comes before a jury and testifies to facts in support of the defense any jury of ordinary understanding is justified in viewing with caution the testimony which he gives. But the Government has produced [2178] witnesses here all of whom are absolutely disinterested. Counsel for the defense would have you believe that this great Government is engaged in the business of suborning witnesses. They would have you believe that witness after witness was brought here into court and induced to perjure himself solely for the purpose of securing the conviction of men whom the defendants' counsel call innocent. Now, that is inconceivable, gentlemen. The Government of the United States or its representatives don't do that. They have not done it in this case and they wouldn't do it in any other case if they lived a thousand years. If there was any bribery or corruption in this case or suborning of testimony it must be on the side of the defense. The defendants are fighting to save their names and to save themselves from punishment. The Government has no interest in this case excepting to see that the laws are enforced. It is not an agreeable duty on the part of the Government to prosecute men who violate the laws, but it is necessary to do so; some must do it; there is no pleasure in attorneys prosecuting men who are charged by the Government with the violation of its laws, but it is a duty that must be performed, and in this case Mr. Roche and I are

performing our duty as best we know how. The Court itself takes no pleasure in imposing penalties upon men who are convicted of crime, but the Court must do it. If people committing crime are allowed to go free through pity or sympathy or bias or prejudice, why, gentlemen, in a very short time indeed you might as well open the jails and have none at all. Society's protecting demands that people who violate the laws and defraud the Government shall be prosecuted and if guilty shall be punished, and we are simply acting as the agents of the Government in asking you to [2179] perform your duties as jurors and to see that these defendants who have violated the laws meet with a verdict of guilty at your hands. \* \* \*

With reference to the difference between the invoice and B/L weights on importation, Mr. Sullivan said:

“Upon that particular charge there is no doubt in the mind of any man familiar with the evidence in this case that the defendants are guilty. There should not be any shortage,” etc. \* \* \*

Again: “You can see very readily with coal selling at retail for \$10 a ton, 20,000 tons would amount to \$200,000.” \* \* \*

Did the Western Fuel Company take advantage of these opportunities? There is no doubt about it. Do you think that the Western Fuel Company or J. B. Smith would resist an opportunity of that kind? You heard J. B. Smith upon the stand make a declaration, and it shows his character. It is the only time in his examination where his instinct got

the better of his reason. I asked him on cross-examination, Do you remember the time the "Aztec" was being loaded from the barge "Melrose" and Captain Lindley of the "Aztec" complained that the coal that you were offering reminded him of Telegraph Hill rocks; he complained that they were rocks and not coal; and that thereupon Eddie Powers took that barge away from that same ship, the "Aztec" and brought alongside the same ship another barge containing the identical kind of coal and that was put on board the "Aztec"? I said to Mr. Smith, "Don't you remember that circumstance, and didn't you say to Eddie Powers, 'You are a damn good man.' " and he laughed right out and said, "Well, I may have, I may have, and if he did that, he was"—[2180] and he laughed—he thought he was a good man, any man who can get the best of those fellows down there is a good man, and if he did that I say he is a good man, a first-class man. That was a declaration made by him during his own examination, and showed his true character.

Here was a representative of the Pacific Mail Steamship Company, entrusted with the duty of getting the proper kind of coal upon these liners which carried hundreds of people and transported thousands of people across the Pacific, complaining that he was getting inferior coal, getting a lot of rocks that would not burn and would not heat the furnace—the evidence taken upon the trial does not show that any such transaction ever took place, and the affidavits of Chisholm and of Lindley, the "Aztec's" chief engineer, offered on motion for new

trial, corroborate this parenthetical statement)—, and Mr. Smith sanctions this act of his own employee, allows that barge of rotten coal, bad, rocky coal, to be taken away and another barge of the same character of coal put alongside of the vessel and that coal put in the ship and that coal used for heating the boilers on the ship, and that coal charged for as first-class coal. He sanctions that. He thinks that is proper. He thinks it is damn smart, to use his own language.

Now, gentlemen, if a man is guilty of an act of that kind, transferring to one of these ocean liners carrying hundreds of men and women and children across the ocean, if he tolerates or instructs an act of that kind to be done, don't you think that he would allow these acts to be committed by Mr. Mills and Mr. Mayer, and his employees, and take the coal consigned to consignees, or to take the coal consigned to himself for the purpose of avoiding duties and allowing that [2181] coal, without being weighed, to drop down into the bunkers below the hoppers and to drop down into the open spaces between the tracks and between the tracks and the side of the bunker? A man who would commit and would admit the commission of the act which he admitted on the stand in relation to the "Aztec" is capable of committing every one of these crimes charged against him in this indictment. \* \* \*

There was a shortage of 62,000 tons. Take the ordinary price charged at retail by the Western Fuel Company, that would be about half a million dollars, at \$8 a ton, a little less than half a million dollars.



Now, gentlemen, that money was dishonestly made. That coal did not naturally increase from the time it was transported from the mine up to the time it was sold. I don't care what these experts say.

\* \* \*

His reports (speaking of those of Mr. Powers, chief chemist of Santa Fe Railroad Co.) are adopted by Mr. Parr, himself, who has come 1000 miles or more to California to bamboozle the jury into the belief that coal will increase in weight while stored in a yard, instead of decreasing in weight. \* \* \*

Anybody knows that if you pour a lot of water upon a matter more or less porous it is going to increase in weight. It was not necessary to pay this man a large sum of money to prove to you gentlemen that putting water in milk increases its volume, or putting water in coal will, at least for a short time, increase the weight of the coal. Everybody knows that. \* \* \*

If the Government representatives had employed a man to make a test which showed the fact, and the Government representatives concealed the report made by that expert, if they [2182] kept it in their possession, and put him on the stand to testify to facts directly contrary to the facts which he knew existed, directly contrary to the facts developed by his own experience, and by his own experiments, then the Government representatives would be entitled to all the abuse and all the denunciation heaped upon them by the high-priced lawyers who came before you to make such frivolous appeals. \* \* \*

In the meantime, mind you, gentlemen, Professor

Parr, the noted chemist and analyst of the United States was working for \$25 a day and expenses paid.

And in speaking of Professor Somermeier also Mr. Sullivan said:

“Here are two of the most noted experts in the country, under pay from the defendants, and the defendants, most honorable men, through their counsel, most honorable men, go to an ignoramus (meaning Folsom) and ask him to analyze the coal, a man who knows no more about coal analysis than you or I, and he so admits.” \* \* \*

Now, gentlemen, little things of that kind show the absolute insincerity of the defense, and their high priced learned lawyers who come before you and before courts denouncing representatives of the Government for unprofessional conduct. \* \* \*

But if David Powers were everything he is painted to be, if Eddie Powers is everything he is depicted to be by the defense in this case, either of them is an infinitely better man than any one of those noted scientists. For coin! They are bought for money. Dave Powers has not been bought for money. [2183] Eddie Powers has not been bought for money. But they were bought for money to come here to perjure themselves and to fool a jury and to defraud the Government. There is no question about that. Folsom, for his \$600 per month, knowing nothing about coal, comes before you and discourses learnedly about plats which he said he made; you believe that he prepared them himself; he discourses learnedly about tests and about analyses which he makes you believe he did himself.

Parr takes the stand and under oath denies his written statement made long ago. He publishes books of instruction to the world, for the instruction of coal miners and coal dealers, and in these very books written not for high price payment, not for big payment, but for the instruction of the world, he comes here before this jury, and for \$25 a day and expenses paid, he perjures himself, contradicts the statements contained in his published books and tries to fool everyone of you gentlemen into the belief that coal will increase a phenomenal extent in weight in 5 or 6 days.

Let them denounce Dave Powers, let them denounce Eddie Powers. But I would not give the little finger of Dave Powers for the whole carcass of a university graduate and professor who for the purpose of earning a few dollars comes before a court and misrepresents the facts and tries to fool the jury and to bamboozle the jury into believing things that are not so. \* \* \*

Now, gentlemen, don't you think that defendants who would put these humbugs of experts on the stand, pay them princely salaries for the purpose of preventing the defendants from going to the state penitentiary, would for the sake of their own liberty, [2184] for the defense of their own case, bring before the jury at least 4 or 5 or half a dozen of the several hundreds of shovellers who did the crooked work for the Western Fuel Company? \* \* \*

Mr. Powers was put upon the stand first a month and a half ago. At that time he was not asked if he made this statement to Mr. Foran, that he would

get J. B. Smith if it took it (him) all his lifetime. He was not asked the question at that time at all. And why? Because counsel knew that he never made any such statement, because in fact he never did. \* \* \*

The Pacific Mail Company is now being robbed annually of many thousands of dollars. It has been robbed by the Western Fuel Company during the last 6 or 7 years of over a quarter of a million dollars. There is no question about that. Between \$40,000 and \$50,000 a year. The books of the Western Fuel Company show that. Mr. Schwerin is the manager and vice-president of the company. On the Pacific Coast he is the Lord of the Pacific Mail. He must know that his company is being robbed, because he is a man of intelligence. \* \* \*

Each one of you in response to questions propounded by me said that you would not by one jot or tittle be influenced by pity or sympathy for the defendants, or any of them, or pity or sympathy for the members of their families. Pity or sympathy have no place in the jury-box. You all swore most positively that you would cast aside all feelings of sympathy and all feelings of pity. I believed you then and I believe now that when you return to the jury-room you will follow the dictates of your conscience and your judgment, that you will keep your [2185] word and will not be influenced by pity or sympathy, and that after giving this case the consideration which it deserves, I am satisfied that your verdict must be one of guilty against all of the defendants.



## VI.

The jury herein, and certain members thereof, committed manifest error and misconduct prejudicial to a fair and due consideration of the above-entitled cause, and to the great prejudice of the substantial rights of the defendant herein, by receiving evidence out of court prejudicial to these defendants, and each of them, other than that resulting from a view of the premises involved herein; and in this respect the aforementioned defendants particularly specify the following evidence set forth in affidavits filed on behalf of these defendants in support of their motion for a new trial hereof:

(1) The following entitled newspaper articles or editorials appearing on the date specified in the San Francisco "Examiner": "Coal Shipments and Atmosphere," in the issue of December 17, 1913; "Scientific Discovery Ruined by Cupid," in the issue of December 18, 1913; "He Earned the Money," in the issue of February 11, 1914.

(2) The newspaper article or cartoon entitled "Breaking Even. If the Consumers ever get a Chance to Sell a Ton of Coal to the Coal Man."

(3) The various articles in the newspapers of San Francisco and the neighboring cities purporting to state the proceedings taken upon the trial hereof.

(4) The newspaper article appearing in the Oakland "Tribune," in the issue of Sunday, February 8, 1914, entitled "Recalls Sugar Fraud History," and signed "The Knave." [2186]

## VII.

The jury herein, and certain members thereof,

committed manifest error and misconduct prejudicial to a fair and due consideration of the above-entitled cause, and to the great prejudice of the substantial rights of the afore-named defendants herein, in each of the following respects, as shown by the affidavits hereinbefore referred to:

(1) By reading and circulating, or reading or circulating the aforesaid newspaper article entitled "Coal Shipments and Atmosphere,"

(2) Also the aforesaid newspaper article entitled "Scientific Discovery Ruined by Cupid."

(3) Also the aforesaid newspaper article entitled "He Earned the Money,"

(4) Also the aforesaid newspaper article or cartoon entitled "Breaking Even. If the Consumers ever get a Chance to Sell a Ton of Coal to the Coal Man,"

(5) Also the aforesaid newspaper article entitled "Recalls Sugar Fraud History,"

(6) By discussing said cause among themselves, contrary to the Court's instructions, before said cause was finally submitted to them for decision, and particularly by statements prejudicial to these defendants made by one or more of said jurors to others of said jury to the effect that said cause, or the method of conducting the business of the Western Fuel Company, with which these defendants were connected, or the method of operation of these defendants was crooked and similar to that alleged to have been employed by the American Sugar Company or Sugar Trust, [2187]

(7) By intimidation practised upon the juror,

R. E. Herdman, so as to induce or compel said juror to join in a verdict of guilty against the defendants herein named, and each of them.

VIII.

The Court erred in admitting in evidence over the objection of the defendants the following statement or document, to wit:

United States Exhibit Number 22, being a statement or document dated April 1, 1906, and entitled: "Western Fuel Co., summary of receipts, sales and profits, Oakland Depot, coal account." The full substance of the evidence thus admitted is set out in the following extract from the testimony of Witness Norcross under direct examination by counsel for the plaintiff:—

Mr. ROCHE.—“ \* \* \* I ask you to look at that” (referring to the above-entitled document) “and state whether that statement shows the quantity of coal on hand at the Oakland Depot on the 1st of April, 1906. A. Yes, it does.

\* \* \* \* \*

Mr. ROCHE.—“We offer these documents” (referring to the above-entitled document and to one similar in character but relating to San Francisco instead of Oakland, and mentioned in the next Assignment, viz.: Assignment IX) “in evidence, may it please the Court.”

Mr. McCUTCHEN.—Mr. Roche, do you claim that these documents were seen by these defendants?

Mr. ROCHE.—By what defendants?

Mr. McCUTCHEN.—By any of the defendants.

Mr. ROCHE.—I don't know whether they were seen, or not, "We are offering them for the purpose of showing the quantity of coal on hand on the 1st day of April, 1906; and we intend to follow this up by showing from the records of the Western Fuel Company the amount of coal received between that date and the 31st of December, 1912.

Mr. McCUTCHEN.—Unless counsel says, if your Honor please, that he proposes to show that these papers were seen by these defendants, we object to the offer.

Mr. ROCHE.—Of course, counsel understands that, may it please the Court—what is the ground of your objection, Mr. McCutchen?

Mr. McCUTCHEN.—That the defendants are not bound by these papers unless they saw them. You say you do not propose to show that the defendants ever saw them. Unless you do they are certainly not admissible against the defendants.

Mr. ROCHE.—This is the situation, if your Honor please: It is necessary for the Government in this case to show, among other things, first, the quantity of coal the Western Fuel Company had on hand on a given date; the quantity of coal received by the Western Fuel Company from that date to another given date, which we will arbitrarily fix at this time as the 31st day of December, 1912; and likewise to show the quantity of coal sold between those two dates, and the quantity of coal on that date, for the purpose of establishing the excess of coal over the importations; in other words, that the Western Fuel Company did sell during that period of time a num-



ber of tons of coal above and beyond the tonnage of coal received by it. Now, of course, it is true, may it please the Court, that a [2189] record which is not brought to the attention of one of the defendants, is not ordinarily admissible in evidence, but that of itself does not prevent us establishing by testimony which is admissible and which is in fact practically the only testimony available, by the records of the company, the quantity of coal which was in the possession of the company, the quantity of coal which was subsequently received by the company, and likewise the quantity of coal which was disposed of by the company during that same period of time.

Mr. McCUTCHEN.—We don't put our objection upon that ground but we do object that these documents are not admissible against these defendants, if the defendants have never seen them.

Mr. ROCHE.—Then as long as counsel does not object upon the ground that the evidence is not the best evidence, and that these entries are not original entries, may it please the Court, it occurs to us that the objection must be overruled because they are being offered at this time for the purpose of establishing what appears to exist upon their face.

The COURT.—The objection is overruled.

Mr. McCUTCHEN.—We note an exception."

To which ruling of the Court, admitting in evidence said United States Exhibit Number 22, the defendants, as hereinbefore indicated, then and there duly and regularly excepted.

## IX.

The Court erred in admitting in evidence, over the objection of the defendants, the following statement or document, to wit:

United States Exhibit Number 23, being a statement or [2190] document dated April 1, 1906, entitled "Western Fuel Co., summary of receipts, sales and profits, San Francisco depot, coal account," and, as indicated by the quotation below, similar in character to the above-mentioned United States Exhibit Number 22 (see Assignment VIII, *supra*), and objected to by the defendants upon the same ground as was urged in objection to said United States Exhibit Number 22 (Assignment VIII, *supra*):

"Q. Now, I direct your attention to another sheet similar in kind, only relating to the San Francisco depot, entitled 'Western Fuel Co., summary or receipts, sales and profits, San Francisco depot, coal account,' and ask you whether that sheet indicates, among other things, the amount of coal on hand in the San Francisco Depot belonging to the Western Fuel Company on the 1st day of April, 1906?

A. That is correct.

Q. And this was compiled as already indicated by you and in the same manner as the exhibit last offered in evidence was compiled; is that correct?

A. Yes.

Mr. ROCHE.—We offer this document in evidence.

Mr. McCUTCHEN.—We make the same objection, I suppose that that objection can be considered as made to all these offers, and the objection overruled and an exception taken.

Mr. ROCHE.—Yes, we will stipulate that; that is, the objection proceeds on the same grounds already stated” (referring to the grounds stated in the extract set out above in Assignment VIII).

“Mr. McCUTCHEN.—Yes, is that satisfactory, [2191] your Honor?

The COURT.—Very well.”

To the ruling of the Court, admitting in evidence said United States Exhibit Number 23, the defendants, as hereinbefore and above indicated, then and there duly and regularly excepted.

NOTE. The following extract from the aforementioned testimony of the witness Norcross referring to United States Exhibit Number 22 and to United States Exhibit Number 23 further explains the substance of the evidence admitted by said exhibits (see Assignments VIII and IX) over the defendants’ objection:

“Q. Do these figures indicate all of the foreign coal on hand and in the possession of the Western Fuel Company, both in San Francisco and Oakland, on the 1st day of April, 1906?

A. It indicates what our books called for on that date.

Q. What I am trying to get at is an explanation of these items contained in your books; is it not a fact that those two items are supposed to show all of the foreign coal on hand in San Francisco and in Oakland on the 1st day of April, 1906? A. Yes.

Q. That is correct, is it? A. That is correct.

Q. And the Western Fuel Company, to your knowledge, had no other foreign coal on hand in the State of California? A. No.

Q. Because the San Diego Depot, if there was any coal on hand at that time, there, was taken into consideration in fixing up the figures, or compiling the figures for the San Francisco office?

A. Yes. [2192]

X.

The Court erred in admitting in evidence, against and over the objection of the defendants herein named, United States Exhibit Number 24, being a statement or document entitled "Western Fuel Co., coal received at Oakland Depot, April 30, 1906, coal account"; said statement or document indicating the coal received at Oakland by the Western Fuel Company during the month of April, 1906.

The substance of the evidence thus admitted is more fully set out in the extract from the testimony of the witness Norcross quoted in Assignment XII below, which extract refers generally to United States Exhibits Numbers 24 to 42, inclusive, and which said exhibits are all documents of substantially the same general character and description.

To the ruling of the Court, admitting in evidence said United States Exhibit Number 24, the defendants then and there duly and regularly excepted.

XI.

The Court erred in admitting in evidence, against and over the objection of the defendants herein named, United States Exhibit Number 25, being a statement or document entitled "Western Fuel Co., coal received at San Francisco Depot, April 30, 1906, coal account"; said statement or document indicat-



ing the coal received at San Francisco by the Western Fuel Company during the month of April, 1906.

The substance of the evidence thus admitted is more fully set out in the extract from the testimony of the witness Norcross quoted in Assignment XII, next below, which extract refers generally to United States Exhibits Numbers 24 to 42, inclusive, which said Exhibits are all documents of [2193] substantially the same general character and description.

To the ruling of the Court, admitting in evidence said United States Exhibit Number 25, the defendants then and there duly and regularly excepted.

## XII.

The Court erred in admitting in evidence, against and over the objection of the defendants herein named, United States Exhibits Numbers 26 to 93, inclusive, being two series of documents or monthly statements compiled by the Western Fuel Company for each and every month from and including the month of May, 1906, to and including the month of December, 1912, each monthly statement in the first series being entitled "Western Fuel Co., coal received at Oakland Depot (here date is inserted) coal account," and being of the same general character and description, *mutatis mutandis*, as United States Exhibit Number 24 (Assignment X, *supra*; and each monthly statement in the second series being entitled "Western Fuel Co., coal received at San Francisco Depot (here date is inserted) coal account," and being of the same general character and description, *mutatis mutandis*, as United States Exhibit Number

25 (Assignment XI *supra*).

The full substance of the testimony thus admitted in evidence is set out in the extract next hereinbelow quoted from the testimony of witness Norcross under direct examination by Mr. Roche, which said extract, while it relates specifically to the monthly statements for the year 1906, United States Exhibits 24 to 42, inclusive, is equally applicable, *mutatis mutandis*, to the corresponding statements for the years 1907 to 1912, inclusive, United States Exhibits Numbers 43 to 93, [2194] inclusive:

“Q. Each of these statements indicating coal received at Oakland during a given month does show all of the coal received at the Oakland depot for that given month.      A. That is right.

Q. Including all foreign coal?      A. Yes.

Q. And each of these sheets purporting to show coal received at San Francisco for each particular calendar month does show all of the coal received by the Western Fuel Company in San Francisco.

A. Yes.

Q. So that both of these sheets together do show all of the coal received by the Western Fuel Company in the State of California for each given calendar month.      A. Yes.

Q. That is correct, is it?      A. Yes.

Q. And these sheets cover from April 1, 1906 to December 31, 1906.

A. I did not look that over.

Q. Well, just look at them so that you can answer that question.

A. That is correct, April to December.

Q. Let me ask you one other question with reference to the imported coal so far as these weights are concerned: It is also true, is it not, Mr. Norcross, that so far as the foreign coals are concerned upon which the Western Fuel Company paid duty during the months indicated by those statements, that is, from and including the month of April, 1906, to and including the month of December, 1906, the weight of coal contained in these statements is the weight upon which the duties were paid; in other words, the ascertained weight; that is correct, is it?

A. That is correct. [2195]

“Q. And is not the invoice or bill of lading weight, excepting in those cases, if there were any such cases, in which the invoice or bill of lading weight agreed with the ascertained weight?

A. That shows the custom-house weight of the coal.

Mr. ROCHE.—I think we had probably better have these marked separately, Mr. Clerk. I will offer all of these statements at the one time, Mr. McCutchen, subject to your objection, of course, and it may be stipulated that the objection applies to each one.

Mr. McCUTCHEN.—Yes, and an exception.”

To the ruling of the Court admitting in evidence said United States Exhibits Numbers 26 to 93, inclusive, the defendants as hereinabove indicated duly and regularly excepted.

### XIII.

The Court erred in overruling the objection interposed by the defendants to the following question

propounded to the witness Norcross on his direct examination:

“Q. For what price were you selling Australian coal at that time” (this question was asked after it had been elicited that the annual statement of the Western Fuel Company for the year 1909 contained the following item “By overrun Australian coal \$21875,” which alleged overrun reduced, by calculation of the witness upon the stand, into terms of weight, instead of money, was 2700 tons).

“Mr. McCUTCHEN.—I object to that as immaterial, irrelevant and incompetent, the selling price of coal has nothing to do with this conspiracy. [2196]

“Mr. ROCHE.—I don’t know whether your Honor desires to have the matter argued, or not.

The COURT.—The objection is overruled.

Mr. McCUTCHEN.—We note an exception.

A. What year was that?

Mr. ROCHE.—Q. That was 1909.

A. Either \$8.00 or \$9.00 a ton, I don’t remember which.

Q. That is, sold by you. A. Yes.

Q. That is, sold by you to the dealers, do you mean? A. Yes.”

To which above ruling the defendants, as above indicated, then and there duly and regularly excepted.

#### XIV.

The Court erred in overruling the objection interposed by the defendants herein named, and each of them, to the introduction in evidence against them, and each of them, of United States Exhibit Number 106, being the so-called dock diary or journal for the



year 1904, kept by the defendant Mills.

The substance of the evidence thus admitted is indicated in the following extract from the testimony in this cause, which extract has reference not only to said dock diary or journal for the year 1904 (United States Exhibit Number 106), but also has reference generally to the dock diaries or journals for the years 1905 to 1912, inclusive (United States Exhibits Numbers 107 to 114, inclusive—see Assignments XVI and XVII, below): [2197]

“Mr. McCUTCHEN.—If you propose to show, if you state that you intend to show that any of these defendants other than Mr. Mills ever saw these books, or heard of them, during any of the time covered by your indictment, we will make no objection to your preliminary offer of them.

Mr. ROCHE.—Counsel certainly understands that we desire to put these books in evidence as books of original entry for the purpose of showing the weight of the coal as it was discharged from the off-shore bunker, and the weight of the coal as determined by the Western Fuel Company at the time it was laden from the barges to the boats which were coaled with coal previously laden upon the barge; that is the purpose for which we intend to use this book and those books. Of course, we will simply have to withdraw this witness and put another witness on to prove the entries before we can put the book in evidence.” (“This witness,” namely, Norcross, having testified that he could not explain the entries in said books.)

\* \* \* \* \*

“Mr. McCUTCHEN.—If your Honor please, with reference to the books which were called to the attention of the witness Norcross just before adjournment, and in order to facilitate the prosecution in laying the foundation for an offer of these books, we will admit that the entries in these books in the handwriting of the defendant Mills were made by him in the course of his employment with the Western Fuel Company.

Mr. ROCHE.—And that they were made upon the dates [2198] which they bear.

Mr. McCUTCHEN.—Yes, we will assume that to be true; yes, we will make that admission subject to correction.

Mr. ROCHE.—And will you also admit, Mr. McCutchen, that where the handwriting is not—

Mr. McCUTCHEN.—Pardon me for interrupting you I think I understand what you have in mind. Subject to correction hereafter, we will admit that where entries are made in the handwriting of any other person than Mr. Mills those entries were made by the person making them in the course of his employment with the Western Fuel Company.

Mr. ROCHE.—And upon the dates upon which they purport to have been made.

Mr. McCUTCHEN.—We don't know anything about that but we make that admission subject to correction.

Mr. ROCHE.—Then we offer in evidence at this time, may it please the Court, the diaries kept by the defendant Mills, the dock diaries kept by the defendant Mills, for the years 1905, 1906, 1907, 1908,

1909, 1910, 1911, and 1912.

Mr. McCUTCHEN.—Now, for the purpose of preserving a record—

Mr. ROCHE.—Just a minute, Mr. McCutchen; and also for the year 1904.

Mr. McCUTCHEN.—We object to these books upon the ground that the books and the entries in them as to all of the defendants, except possibly the defendant Mills, are hearsay and are not admissible, and that they are incompetent. [2199]

The COURT.—That may or may not be true at the present time. The objection however will be overruled and the books will be admitted.

Mr. McCUTCHEN.—We take an exception to that ruling.”

To which ruling of the Court admitting in evidence, against said defendants, and each of them, said United States Exhibit Number 106, the defendants as above indicated, then and there duly and regularly excepted.

## XV.

The Court erred in overruling the objection interposed on behalf of defendants, James B. Smith and E. H. Mayer, to the introduction in evidence against them, and each of them, of United States Exhibit Number 106, being as aforesaid (see Assignment XIV) the dock diary or journal for the year 1904 kept by the defendant Mills.

The substance of the evidence thus admitted is indicated by the extract from the testimony quoted in the next preceding Assignment (see Assignment XIV) and by the following extract from the testi-

mony in this cause, which following extract relates to the objection on behalf of all the defendants, except the defendant Mills, to the admission of said United States Exhibit Number 106 (together also with United States Exhibits Numbers 107 to 114, inclusive, being as aforesaid in Assignment XIV, the dock diaries or journals for the years 1905 to 1912, inclusive—see also Assignments XVI and XVII).  
[2200]

“Mr. McCUTCHEN.—\* \* \* And now we make the same objection” (referring to the objection noted in Assignment XIV, *supra*) “on behalf of all the defendants excepting the defendant Mills.

The COURT.—All the effect that this matter might have upon the other defendants will depend a great deal on whether or not a conspiracy is shown.

Mr. McCUTCHEN.—Yes.

Mr. ROCHE.—Of course, that is correct, may it please the Court, that if we do not show a conspiracy among these defendants, that as to such defendant against whom we do not show a conspiracy the Government would not have made out a case. But the primary purpose for which the books are being offered at this time is for the purpose of showing that weight of the coal at the time the coal was laden on the barge, and likewise to show the weight of the coal at the time the coal was taken from the barge and laden on to the boats.

The COURT.—The objection is overruled.

Mr. McCUTCHEN.—And your Honor overrules the second objection also.” (Referring to the objection in this Assignment above stated “on behalf of



all the defendants except the defendant Mills.”)

The COURT.—Yes.

Mr. McCUTCHEN.—We take an exception.”

To which ruling of the Court admitting in evidence against defendants, James B. Smith and E. H. Mayer, said United States Exhibit Number 106, said defendants as last above indicated then and there duly and regularly excepted. [2201]

### XVI.

The Court erred in overruling the objection interposed by the defendants herein named, and each of them, to the introduction in evidence against them, and each of them, of United States Exhibits Numbers 107 to 114, inclusive, being the so-called dock diaries or journals for the years 1905 to 1912, inclusive, kept by the defendant Mills.

Said Exhibits are not herein made the subject of separate and individual assignment, for the reason that each and all of them are of substantially the same general character and description and were introduced in evidence contemporaneously by counsel for the plaintiff herein.

The substance of the evidence thus admitted is indicated by the extract, from the testimony herein, quoted in Assignment XIV, *supra*, which said extract as there explained refers generally to the dock diaries or journals for the years 1904 to 1912, inclusive, being United States Exhibits Numbers 106 to 114, inclusive.

### XVII.

The Court erred in overruling the objection interposed on behalf of defendants, James B. Smith and

E. H. Mayer, to the introduction in evidence against them, and each of them, of United States Exhibits Numbers 107 to 114, inclusive, being the so-called dock diaries or journals for the years 1905 to 1912, inclusive, kept by the defendant Mills.

Said Exhibits are not herein made the subject of separate and individual assignment, for the reason that each and all of them are substantially the same general character and description and were introduced in evidence contemporaneously by counsel [2202] for the plaintiff herein.

The substance of the evidence thus admitted is indicated by the extracts, from the testimony herein, quoted in Assignments XIV and XV, *supra*, respectively, which said extracts, as in said assignments explained, refer generally to the dock diaries or journals for the years 1904 to 1912, inclusive, being United States Exhibits Numbers 106 to 114, inclusive, and the latter of which extracts (quoted in Assignment XV) relates to the objection to the admission of said Exhibits urged on behalf of all the defendants except the defendant Mills.

#### XVIII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Norcross on his cross-examination:

“Q. Do you recall whether at the time that you purchased their coal they had a considerable stock on hand?”

(The witness immediately prior to the propounding of said question had testified that he first heard

about overages or overruns in the coal business in 1903, and in connection with the purchase of coal by the Western Fuel Company from the Wilson Company and the Howard Company, the latter being the vendor referred to in the above quoted question.)

The substance of the answer which it was expected the witness would give is indicated by the following quotation:

“Mr. ROCHE.—One moment, may it please the Court. That is objected to upon the ground it is not proper cross-examination and as immaterial.

Mr. MOORE.—The purpose of it was this,—he was asked, Mr. Norcross was, when he first heard about overruns. Now, I propose to show upon cross-examination, if I might be permitted [2203] to do so, that the first overrun that he heard about was not in connection with the business of the Western Fuel Company at all, but at the time they purchased certain coal, buying it upon book weights subject to adjustment on outturn weights; when it was actually weighed, it came to his knowledge in that case. It is merely cross-examination as to when he first heard about overruns. I think that it is admissible upon cross-examination on this theory too, your Honor. It seems to me that this witness has been examined as if these overruns were a strange and novel thing and peculiar only to the business transacted by the Western Fuel Company and that some veil of secrecy seems to surround them, that as little was said concerning them as possible, as if they were treated as something strange and unusual; and it is to negative that idea or inference, if it is one which is claimed

can be drawn legitimately from the direct examination. I would like to ask of this witness if he did not hear of overruns in connection with the business of other companies as well.

Mr. ROCHE.—The direct examination of this witness in so far as it related to overruns related exclusively to the business done by the Western Fuel Company. We are not at this time trying any frauds committed by any other coal concern or companies in the State of California. If it becomes necessary to do so, of course, we will do that at the proper time. But counsel is now under the guise of cross-examination of this witness trying to ascertain from him what he heard concerning the accounts [2204] of other coal concerns doing business in San Francisco, or elsewhere.

Mr. MOORE.—There has been, if your Honor please, an implication that the occurrence of an overrun constitutes fraud. It is to dissipate that very idea that I desire to cross-examine this witness not only with respect to these other two dealers. That I can do through the medium of cross-examination. But if an overrun constitutes fraud I can say now that every man in the coal business in the United States is also guilty of fraud from the mere fact and circumstance of an overrun. That is just what we object to in this case. If a man has 1.9 overrun or 2.3 overrun or 2.9 overrun, where he has handled two millions of tons of coal in large blocks and quantities, why, by whatever system of weighing, we claim that that does not necessarily and of itself show fraud; considering the proportion of the overrun



and the bulk of the commodity handled, it is absolutely inconsistent with any such idea. Now, returning to the matter of cross-examination of this witness, if your Honor please, we submit that counsel himself in his remarks has just emphasized it, that they are trying to make something out of this overrun here, without telling the jury what the overrun amounts to or apparently being willing to disclose that information, and asking this witness when he first heard of overrun; and in that connection and upon cross-examination we desire to elicit the fact as to when indeed he did first hear of an overrun.

The COURT.—The overrun as disclosed by these reports and books. [2205]

Mr. ROCHE.—No.

Mr. STANLEY MOORE.—No, he was asked the question—

The COURT.—The objection will be sustained.

Mr. MOORE.—Exception.”

To which ruling of the Court the defendants, as hereinabove indicated, then and there duly and regularly excepted.

## XIX.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Norcross on his cross-examination:

“Q. Mr. Norcross, if the company’s business was considered right back to its beginning, what do I understand you to say would be the average of dividends or income that has been received from it?

Mr. ROCHE.—Now, just one moment, may it

please the Court, that question is objected to upon the ground that it directs the witness' attention to a date anterior to the first day of January, 1904."

To which ruling of the Court, the defendants then and there duly and regularly excepted.

## XX.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Norcross on his cross-examination immediately after said witness had testified that certain annual statements of the Western Fuel Company, in which mention of overruns appears were intended for the persual of all of the stockholders of said Company, as well as of the directors thereof: [2206]

"Q. Did you see anything strange or to excite suspicion by reason of it?" referring to the so-called "overruns" experienced by the Western Fuel Company.

To which ruling of the Court the defendants then and there duly and regularly excepted.

## XXI.

The Court erred in overruling the objection interposed by the defendants to the following question propounded to the witness Moynihan on his further redirect examination:

"Mr. ROCHE.—Q. 10 lbs. over and under 5 lbs.; so that, in your judgment as an experienced weigher, the actual weight of coal would be within 10 lbs. of the weight taken upon a rising beam."

The testimony on recross and further redirect examination immediately preceding the above quoted

question was as follows:

“Mr. DUNNE.—Q. Do you always give yourself sufficient time to make exact weights when you are weighing coal?

A. What do you mean by exact weights?

Q. Well, I mean just exactly what the word ‘exact’ means; I mean precisely correct to the lb.

A. We follow the custom in vogue of taking the weight with a rising beam; we do not wait for it to stop.

Q. Will you just answer my question, understanding what the word ‘exact’ means; do you always give yourself sufficient time in weighing coal to get precisely exact weights? Now, you can answer that yes or no, I think.

A. Well, I will answer it by stating that we take it on the rising beam, the beam is never steady as a rule when we take the weights; now whether that is exact, or [2207] not—I don’t really know to what point you are getting.

Q. As an experienced weigher do you mean to say that a weight registered upon a rising beam is a precisely exact weight to the lb.?

A. We never weigh as close as a lb. Our weights are never recorded less than 10 lbs. That is, on a 10-lb. decimal.

Q. Why don’t you wait in that process for precisely exact weights?

A. Well, we are following a custom that is handed down to us under orders to weigh within 10 lbs.

Q. Well, in plain English, Mr. Moynihan, if you were to wait for precisely exact weights in weighing

coal when you were unloading ships, you could not do business, could you—the world has to move on, has it not?

Mr. McCUTCHEN.—There is no answer to that.

Mr. DUNNE.—I don't think it requires an answer.

Further Redirect Examination.

Mr. ROCHE.—Q. Mr. Dunne has asked you how close to an absolutely accurate weight you weigh the coal at the time the coal is weighed: I will ask you this question, in your judgment as a weigher, having 18 years experience, how close to the actual weight of the coal is the coal weighed when it is weighed by you upon a rising beam?

Mr. McCUTCHEN.—The witness said on cross-examination, may it please the Court, that he could not tell how exact it was.

Mr. ROCHE.—But he may be able to give that testimony, may it please the Court, although he does not weigh the coal other than upon a rising beam, for this reason, if your Honor will permit me to argue the matter— [2208]

The COURT.—There is no occasion to argue it; if I get a chance to rule I will overrule the objection. Answer the question.

A. We try to get it within the decimal of 10 lbs. over and under 5 lbs."

The question first above quoted which immediately follows the last answer was objected to by the defendants "as calling for the conclusion of the witness, and as not necessarily following from his other testimony."



To the overruling of this objection by the Court the defendants then and there duly and regularly excepted.

XXII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Dougherty, (Chief United States Custom-house Weigher) on his cross-examination:

“Q. Is it not a fact that most of the articles are not weighed on a rising beam?”

The reporter's transcript immediately following the question quoted reads thus:

“Mr. ROCHE.—That is objected to, may it please the Court as calling for the conclusion of the witness, and upon the further ground that the regulation upon which Counsel relies has already been read in evidence.

Mr. STANLEY MOORE.—It goes to his knowledge and his experience as a weigher.”

To which ruling of the Court, the defendants then and there duly and regularly excepted.

XXIII.

The Court erred in sustaining the objection interposed [2209] by the plaintiff to the following question propounded to the witness Tidwell on his cross-examination:

“Q. Now, I ask you what other matters have you in mind and which you use in that assumption other than these three instances of the ‘Germanicus’ and the ‘Dumbarton’ ”?

The context is indicated by the following testimony

immediately preceding the question quoted:

“Mr. McCUTCHEN.—Q. Your calculation was made on that basis, was it not? A. Yes, sir.

Q. That the coal which passed over the scales and went into the offshore bunkers was correctly weighed? A. Yes, sir.

Q. Does not that assumption include all coal that passed over the scales?

A. Why, not in every instance, no.

Q. Well, aside from these three or instances that have been spoken of here, does not that assumption include every ton and every lb. of coal that passed over the scales?

A. No sir, for the reason that we have some information as to crooked weighing.

Q. Mr. Roche has called attention to the discharge of several cargoes, where there was a shortage; you have those in mind, have you not?

A. Yes, I have those in mind.

Q. The ‘Dumbarton’ and the ‘Germanicus’?

A. Yes, as well as other matters.

Q. Where the settlement was made with the Government on the invoice weight, and not on the custom-house weight.

A. That as well as other matters.

(Then follows immediately the question first above quoted to which plaintiff objected.) [2210]

To which ruling of the Court sustaining the objection of the plaintiff, defendants then and there duly and regularly excepted.

#### XXIV.

The Court erred in sustaining the objection inter-

posed by the attorneys for the plaintiff to the following question propounded to the witness Tidwell on his cross-examination:

“Mr. STANLEY MOORE.—Q. Well, do you recall anything further having been said in that connection, Mr. Tidwell, other than what you have already testified to?”

To which ruling of the Court the defendants then and there duly and regularly excepted.

The information desired to be elicited by the defendants in propounding the above question is indicated by the following immediately preceding testimony:

“Mr. STANLEY MOORE.—If your Honor please, we would like to ask the witness just a few questions in order to lay a definite record in regard to a certain matter as to which he has been questioned.”

(The “certain matter” referred to was the alleged appearance of certain newspaper articles in the public press of San Francisco after Mr. Tidwell’s examination of the books and papers of the Western Fuel Company.)

“Q. Mr. Tidwell, do you recollect upon what date it was that the company turned over the books to yourself and to your assistant back in February of this year?

A. No, I do not recall the exact date, but I do recall, or at least I think I am correct in this as to [2211] “the exact date, that the company was subpoenaed to appear before the Grand Jury to produce its records on the 7th of February. That is my best

remembrances of the date at the present time, and that soon after that, a few days afterwards, the records were turned over, that is, certain records were turned over.

Q. Had any demand been made upon the company previous to the service of this subpoena?

A. No, sir.

Q. Do you remember whether after the subpoena was served upon the company, and within a day or so, Mr. Norcross or Mr. Olney or Mr. Howard informed you, or the members of the Grand Jury, or the United States District Attorney, that you were welcome to look at the books?

Mr. ROCHE.—That question is objected to as not proper cross-examination.

Mr. STANLEY MOORE.—It goes to fix a date, your Honor. There has been some suggestion here in regard to the books during the direct examination, and the suggestion it seems to me has been thrown out by the witness during the cross-examination that there was nothing voluntary about the original production of these books. In view of that I simply want to develop the fact so that the witness could judge as to the correctness of that statement. It goes to fix the date with reference to this other matter that I desire to lay the foundation for.

Mr. ROCHE.—Counsel can by a direct question put to the witness, bring out that matter. He can put a direct question to the witness for the purpose of ascertaining or having him fix the precise date upon which the particular transaction which he has in mind occurred; but he has no [2212] right for



that purpose to attempt to elicit from the witness conversations which took place between himself and various other parties. The only purpose for which this examination was permitted this morning, or for which it was pursued, was for the purpose of showing animus, or rather, it was so claimed because the witness at a certain time made a certain request of one of the Government officials with reference to certain Government documents. That matter was fully developed this morning and was fully investigated as the result of the questions put to the witness. This should not be permitted now under the guise of cross-examination.

Mr. STANLEY MOORE.—I think I would have the right to go into the question of the original production of the books at any event in view of some of the assertions and statements made by the witness during the course of his examination, and by Mr. Roche as well during the course of the objections, which objections have been interlarded with statements as to the facts concerning these matters. I simply wanted to develop the fact from the witness in regard to the production of the books. And incidentally I want to fix also a certain date with respect to the appearance of certain newspaper articles.

The COURT.—The objection is overruled.

A. The date which I will fix is February 7th—and I think that is correct, on that date Mr. Norcross and the defendant Howard appeared in answer to a subpoena and brought two or three records; one was a book kept by the defendant Mills; another was a discharge sheet—those yellow discharge sheets, and an-

other was a large book which is also in evidence [2213] “here, I don’t know how to describe it exactly. At that time both Mr. Howard and Mr. Norcross, as I remember it, stated that we could have their books to go into whenever we saw proper. A few days later, probably the next day, I don’t know exactly, Mr. Norcross and I had a conversation and certain records were then delivered.

Mr. STANLEY MOORE.—Q. Well, is it not a fact that they also stated to you at that time that you could go down there, together with any persons whom you might designate to assist you in the examination, and examine the books and records of the company, down in the office of the Western Fuel Company?

Mr. ROCHE.—That is objected to, if your Honor please, upon the same grounds.

The COURT.—That does not fix any date.”

### XXV.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Tidwell on his cross-examination:

“Q. Then, Mr. Tidwell, do you recall an article appearing in the ‘San Francisco Bulletin’ the day after you commenced this examination of the books and papers of the Western Fuel Company concerning these books and papers?

To which ruling of the Court the defendants then and there duly and regularly excepted. [2214]

### XXVI.

The Court erred in sustaining the objection interposed by the plaintiff to the following question pro-

pounded to the witness David G. Powers on his cross-examination:

“Q. The question is, are you positive that you did not?

To which ruling of the Court the defendants then and there duly and regularly excepted.

The context is indicated by the following immediately preceding testimony:

“Q. I will ask you this question, Mr. Powers, have you not yourself stated that you expected to get a very large amount of money out of this case, and when asked how you expected to get that, have you not stated that there was a sugar case back there in Philadelphia, and the man who gave the information there got a very large amount of money, which was a percentage of the fine?      A. No, sir.

Q. Do you testify positively, Mr. Powers, that you have not made that statement here in the City and County of San Francisco?

A. I am testifying to everything I can remember. I testify that I do not remember making any statements like that.

Q. The question is, whether or not you testify to that positively or not, or merely is it your answer that you don't remember making any statement like that? As I understood your answer first, it was that you [2215] “positively answered ‘No,’ you had not made any such statement. Is that correct, or is it that you don't remember?

A. I don't remember ever making any such statements.

Q. That is the very point of the question that I am

attempting to address you. Do you undertake to say here positively and as a matter of fact, that no such statement has ever been made by you?

A. Yes, I can say to that, according to my own mind, yes.

Q. When you say 'according to your own mind,' you mean according to your recollection, or is your mind clear on that, and are you able to positively deny that you ever have done so?

A. I am testifying that as far as I can remember anything I can remember of—I am testifying positively to what I can remember.

Q. I have to recur to the question again: I want to ask you now again, can't you recollect as to whether, in point of fact, you have made any such statement as that? A. I cannot recollect.

Q. Do you undertake to testify positively before this Court and jury that you have made no such statement as that?

A. Yes, according to my mind; I cannot remember ever making any such statement." [2216]

## XXVII.

The Court erred in overruling the objection interposed by the defendants to the following question propounded to the witness Edward Powers on his direct examination:

"Q. Have you been requested upon various occasions by the attorneys representing the Government to advise them or one of them of the facts within your knowledge relating to this case?

Mr. McCUTCHEN.—I object to that as irrelevant and immaterial, if your Honor please."



To which ruling of the Court the defendants then and there duly and regularly excepted.

XXVIII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Edward Powers on his cross-examination:

“Q. So far as any discrepancy in the tubs is concerned, Mr. Powers, is it or is it not your opinion that it is due to that particular system of weighing that the Government itself through the custom-house follows, and not to any fault so far as the Western Fuel Company is concerned, or any of its employees”?

To which ruling of the Court the defendants then and there duly and regularly excepted.

XXIX.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded [2217] to the witness Edward Powers on his cross-examination:

“Mr. STANLEY MOORE.—“Is it not a fact then that you would attribute it” (the examining attorney meaning ‘it’ as shown by his immediately preceding question, the fact \* \* \* if it be a fact, that the tubs that are weighed have some more coal in them than the tubs which are not weighed?) “to that system of weighing down there”?

To which ruling of the Court the defendants then and there duly and regularly excepted?

XXX.

The Court erred in sustaining the objection interposed by the plaintiff to the underlined (*italicized* in

printed transcript) question propounded in the below quoted testimony to the witness John W. Smith, a United States Customs Inspector, on his cross-examination:

“Q. Do you know whether that” (referring to the “Americano” discharged at the Folsom Street Dock in January, 1913) “was a foreign or an American ship?”

A. I believe it is a foreign ship.

Q. *Do you know whether she was represented at that operation by her Captain, or by a clerk of the ship?*

Mr. ROCHE.—That question is objected to as not being proper cross-examination.

Mr. McCUTCHEN.—He has told about the operation, your Honor, and about what was done. If he does not know it, I don’t care to press it.

Mr. ROCHE.—Of course, in the very nature of things he could not have known it, but irrespective of that, may it please the Court, it is not proper cross-examination.”

To which ruling of the Court the defendants then and there duly and regularly excepted. [2218]

### XXXI.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness John W. Smith on his cross-examination:

Mr. McCUTCHEN.—“Q. Were you always accompanied by some one else on the occasion of those visits”?

(Referring to the visits of the witness who was a

United States Customs Inspector to the bunkers of the Western Fuel Company.)

To which ruling of the Court the defendants then and there duly and regularly excepted.

### XXXII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded on cross-examination of the witness Samuel Griffin, formerly a motorman in the employ of the Western Fuel Company on cars carrying coal on the docks from steamer to scales:

“Q. What do you think would happen to those scales if you ran under that weight-house and onto the scales with your cars piled so high with coal that you collided with those beams?

Mr. ROCHE.—That is objected to as calling for the conclusion of the witness.”

The answer which the examining attorney expected to elicit from said overruled question is indicated by the following question asked of the witness immediately before:[2219]

“Mr. STANLEY MOORE.—Q. Have you ever heard anybody say that if those cars were overloaded and they got to grinding against those beams, that it would break those scales”?

To which ruling of the Court the defendants then and there duly and regularly excepted.

### XXXIII.

The Court erred in overruling the objection interposed by the defendants to the following question propounded to the witness Arnold Freund on his direct examination:

“How much time, elapsed, if you can recall”?

To which ruling of the Court the defendants then and there duly and regularly excepted.

The context is indicated by the following quotation from the testimony of said witness in which the question objected to and quoted above appears and is underlined (italicized in printed transcript):

“Q. Do you recall an occasion when you weighed a barge out short?     A. I do.

Q. When was that?

A. I have forgotten the date of it; sometime in 1908, I believe.

Q. Were you watching the tubs very closely on that occasion?     A. I was.

Q. Had there been some complaint made about the weights of coal at that time?     A. By whom?

Mr. STANLEY MOORE.—Just a moment. We object to that, your Honor, as irrelevant and incompetent.

The COURT.—The objection is sustained.  
[2220]

Mr. ROCHE.—I will withdraw that.

Q. You say you were watching the tubs very closely?     A. Yes, sir.

Q. What, if anything, occurred after you had completed weighing out that barge; when did you next get an assignment to weigh drawback coal?

A. Sometime after.

Q. *How much time elapsed, if you can recall.*

Mr. McCUTCHEN.—We object to that. What is the inference to be drawn from that?

Mr. ROCHE.—We have a right, may it please the



Court, in a case such as this, to show what the facts are, to show what the situation was upon this particular occasion and to ascertain when he was next called upon to act as an assistant weigher in weighing drawback coal.

Mr. McCUTCHEN.—It is intended that an inference of some improper conduct on our part shall be drawn from that, and I submit that it is unfair and that no such inference is properly deducible.

The COURT.—The objection is overruled.

Mr. McCUTCHEN.—We note an exception.

A. I don't know, but some few months as far as I can recollect. It was quite a while; I don't recollect the date of it but I know I didn't get down there for some time after."

#### XXXIV.

The Court erred in overruling the objection interposed by the defendants to the introduction in evidence, under the circumstances indicated in the quotation below, [2221] of extracts from the minutes of the monthly meetings of the board of directors of the Western Fuel Company of the following named dates:

September 10, 1908, September 30, 1908, November 4, 1908, December 7, 1908, February 18, 1909 (including for this date that portion of the minutes showing the submission of the annual statement already heretofore introduced in evidence), February 23, 1909, March 10, 1909, March 20, 1909, April 29, 1909, June 7, 1909, July 14, 1909, August 3, 1909, September 27, 1909, December 9, 1909, December 30, 1909, February 1, 1910, May 18, 1910, June 28, 1910,

August 25, 1910, September 22, 1910, October 27, 1910, November 25, 1910, December 21, 1910, January 26, 1911, March 24, 1911, July 1, 1911, July 22, 1911, August 29, 1911, September 28, 1911, November 29, 1911, December 26, 1911.

(Said extracts were introduced in evidence contemporaneously, and are, therefore, not made the subject of separate and individual Assignments.)

Mr. ROCHE.—Your Honor will recall that a few days ago it was stipulated that certain portions of the minutes should be deemed to have been read in evidence. I think that before we close our case, I ought to direct counsel's attention to the particular dates upon which the meetings were held, part of which minutes we desire to have considered read, so as to perfect the record here.

Mr. McCUTCHEN.—If you would limit the purpose for which you want those minutes in, Mr. Roche, so that we would not be taken by surprise by finding something in them to which our attention has not been called, we might consent that the entire books go in. [2222]

“Mr. ROCHE.—We don't desire the entire minute books to go in, because it would simply encumber the record. It will only take a moment for me to read an extract taken from one of the meetings, and we can assume that only that portion of the proceedings of the other minutes is offered in evidence.

“San Francisco, September 10, 1908.

“Present: John L. Howard, James B. Smith, Joseph L. Schmidt, Robert Bruce and Sidney V. Smith. Statements with balance sheet showing the

results of the company's business to July 31, 1908, were submitted, and on motion of Bruce, seconded by Mr. Sidney V. Smith were accepted and ordered placed on file."

That is the only extract from those minutes, may it please the Court, of that date, that we desire to offer in evidence.

I will now direct the reporter's attention to the dates upon which these subsequent meetings were held, and only those portions of the minutes showing the directors present, and those portions of the minutes relating to the submission of statements and the action which was taken by the board of directors on those statements are offered in evidence.

Mr. McCUTCHEN.—Just a moment. Mr. Roche, the situation is not complete simply upon the offer of that portion of the minutes. You have not offered any of these balance sheets. They are here; they are here at your disposal, but you have not offered them up to this time. It does not seem to us, if your Honor please, that it is proper or that it is fair to these defendants, to offer these resolutions without offering the statements to which the resolutions refer. Of themselves, the resolutions do [2223] "not explain anything. If counsel is to claim hereafter, as I have no doubt he will claim, that these resolutions refer to something else, he ought to develop to what they refer. If he is going to offer the resolutions for the purpose of showing that some statement was read to the directors, or was considered by them, he ought to offer the statements that were read at the same time.

Mr. ROCHE.—The answer to that is this: We do not consider ourselves bound by the testimony given by the witness, Norcross, as to what did, in fact, come up for consideration before the directors. Now, we have offered in evidence monthly statements showing the total quantity of business in tonnage, some of these statements showing tonnage, and other statements showing dollars and cents, which were rendered from time to time in connection with the business of the company. Now, we say, may it please the Court, that it is for the jury to determine, from the language used in these minutes, and from the language in which the proceedings of the board of directors is couched—I say it is for the jury to determine to what statements the language refers, and whether any of the statements which have heretofore been introduced in evidence are statements referred to by the minutes of the meetings of the board of directors.

Mr. McCUTCHEN.—We have the testimony of Mr. Norcross—I don't claim that the prosecution is bound by Mr. Norcross' testimony, but we have the testimony of Mr. Norcross, which up to this stage has not been contradicted, that the statements which have been offered in evidence are not the statements referred to in these minutes. The showing up to this time is that those statements are not before the [2224] Court. As I say, none of us have any objection to the offer of these minutes, but if the resolution to which counsel has just called attention is to be offered and to be considered by the jury, then counsel ought to do one of two things, he ought either



to offer the financial statements, of which he has control and which are in his possession, or he ought to offer proof that the statements which he has already put in evidence are the statements referred to in these resolutions.

Mr. ROCHE.—It seems to me, may it please the Court, that this is a conclusive answer to the contention of Mr. McCutchen; that we—

The COURT.—How is this matter before the Court? Is there an objection to this resolution?

Mr. ROCHE.—It really is not before the Court at this time.

Mr. McCUTCHEN.—Counsel was offering that, and I was only suggesting that to get the whole matter before the Court these statements should be offered, and that the record will be incomplete, if the offer of the resolution, itself, is unaccompanied by those statements.

Mr. ROCHE.—Is there any objection to these minutes going in?

Mr. McCUTCHEN.—I don't think they are material, and I don't think they are complete.

Mr. ROCHE.—We submit that objection.

Mr. DUNNE.—We put the objection on the ground that the offer is without foundation.

The COURT.—The objection is overruled."

To which ruling of the Court admitting in evidence said extracts from said minutes, failing (a) the offer of proof of identification of statements heretofore introduced in evidence or, in the alternative, (b) the introduction of the financial statements of the Western Fuel Company (see the quotation above), the

defendants then and there duly and regularly excepted. [2225]

## XXXV.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Bud Hopkins, time-keeper for the Western Fuel Company, on his cross-examination:

“Q. Is it or is it not the fact that all along the waterfront when mercantile concerns wanted to get freight off, or wanted to carry the operations past the regular hours of the custom-house employees, that that overtime was paid?”

To which ruling of the Court the defendants then and there duly and regularly excepted.

## XXXVI.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Costello on his cross-examination:

“Q. How many of these invoices or consumption entries would be used up in the discharge of that cargo, if there had been attempted to be made an affidavit and papers concerning each one of them claiming the coal, and the vessels, if that could be done, which had been laden into the barge, and which went out of the barge?”

To which ruling of the Court the defendants then and there duly and regularly excepted.

The circumstances under which the question was asked were as follows:

The said witness Costello had been placed on the

stand to testify under direct examination from the Mills dock diaries or journals concerning the date on which certain imported [2226] coal had been brought into the port of San Francisco on the S. S. "Tellus," and the amount thereof, and as to the source of certain coal on which drawback was subsequently claimed by the Western Fuel Company, which coal was subsequently claimed by the Western Fuel Company, which coal was laden for fuel purposes on the steamer "City of Para." If the witness Costello correctly explained the entries in said Mills dock diaries or journals his testimony showed first, that more coal was laden on the "City of Para" than went into the barge from which she was loaded; and, secondly, that at least 60 tons of coal that went into the said "City of Para" could not have come from the S. S. "Tellus" because said 60 tons were laden on the former vessel before the latter berthed in San Francisco.

Counsel for the plaintiff then read in evidence the affidavit of defendant, James B. Smith, purporting to certify that the coal which was laden upon the "City of Para," and on which drawback was subsequently claimed, came from the "Tellus."

The following testimony immediately preceding and leading up to the question first above quoted, which was overruled, is given herein as showing the context of that question:

Mr. STANLEY MOORE.—Q. Mr. Costello, as a matter of fact, according to the Mills books, there went into that particular barge which discharged among other vessels, into the "City of Para," coal

that came from a number of different vessels, coal that had originally come into this port laden upon a number of different ships; is not that correct?

A. Yes, two or three, I think, two or three different vessels.

Q. And did not there also come into that particular [2227] “barge coal from bunkers as to which there was no designation as to what ship it had come into the port on? A. Yes, sir.

Q. And perhaps there may have been coal that came into the barge from the yards, although that might not be true as to this particular instance, but that does occur with respect to the loading of these barges, according to those books, does it not?

A. Yes, sir, it does.

Q. Is it or is it not a fact that all of that coal is imported coal, whether it came in on one ship or another, as to which when loaded into an American bottom, the owner of that bottom, who pays for that coal, is entitled to a drawback.

Mr. ROCHE.—One minute: We object to the question as calling for the conclusion of the witness. It asks the witness to pass on the regulations enacted by the United States Government, and, furthermore, it is not proper cross-examination.

The COURT.—The objection is sustained. The books show, and it will probably be taken as a fact, so far as the Court can determine it, that most of the coal discharged from the offshore bunkers was imported coal.

Mr. ROCHE.—Yes, your Honor, all of it, in fact, I think.



The COURT.—And it appears that the coal that was laden into the “Comanche” came from different places, among others, the offshore bunker. I assume that would be establishing, at least indirectly, that the coal was imported coal.

Mr. ROCHE.—Yes, your Honor.

The COURT.—I don’t understand that there is any claim on the part of the Government in this case that they were not entitled to drawback on this particular coal, the claim being that more drawback was claimed than they were entitled to, [2228] and that all of it did not come in on the steamship “Tellus.”

Mr. STANLEY MOORE.—That is not the purpose of this particular evidence, your Honor. In that view, it would not make any difference what vessel it was, so far as that particular contention is concerned. The witness has been examined on that but has not stated—and we don’t know now what proportion of overage he claims existed with respect to these barges. I can get at the matter this way, however.

### XXXVII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Costello on his cross-examination in which question the witness was asked:

“Q. Have you given the matter any consideration with respect to, say the affidavits which were made by the officials of the Pacific Coast Coal Company with respect to drawback on imported coal in this port?”

To which ruling of the Court the defendants then

and there duly and regularly excepted. [2229]

### XXXVIII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Tietjen upon his direct examination:

“Q. And it was one of those things which you would naturally expect, would you, in the course of the business?” (referring to the lowering of the scales down upon the catch block beneath by the pulling or sinking of the supporting nut into the soft wood, to which the witness had just testified. The immediately preceding question and answer were: “Was there any indication that that bolt or that scale had been tampered with? A. Not that I could see or know.” (The scales referred to were those at the Folsom Street dock or bunkers on which incoming coal imported by the Western Fuel Company was weighed for customs duties.)

To which ruling of the Court the defendants then and there duly and regularly excepted.

### XXXIX.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Tietjen on his redirect examination. The question refers to certain experiments made by the witness on the scales hereinbefore referred to on the Folsom Street docks about three weeks before his testimony was given: [2230]

“Will you state whether or not you were requested to go down and make these weights in such manner

as the custom-house men were accustomed to making them?

Mr. ROCHE.—We object to that as immaterial and as not redirect examination.

Mr. KNIGHT.—It is redirect examination on the cross-examination and on the questions put to the witness as to how he went down there to make the weights.”

To which ruling of the Court the defendants then and there duly and regularly excepted.

XL.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the Witness Desmond on his redirect examination. The question relates to the two beams that cross the tracks at Folsom Street Bunkers in front of the scales-house:

“Q. Is it or is it not the fact that when this car passed under that first beam there it would give him an idea, and, when he was bringing that car to a stop, as to what the clearness would be in regard to passing over the scale before going under the second beam?

To which ruling of the Court the defendants then and there duly and regularly excepted.

XLI.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the Witness Parr upon his direct examination:

“Are there other people besides yourself, for [2231] instance, other universities or government

agencies, making a study of the properties?" (Meaning the properties of coal.)

To which ruling of the Court the defendants then and there duly and regularly excepted.

The information desired to be elicited by this question is indicated by the following answer, which was stricken out on motion of the plaintiff, and by the following extract from the transcript:

"A. There are.

Mr. ROCHE.—That question "(referring to the question first above quoted)" is objected to on the ground, may it please the court, that it is immaterial; it certainly does not tend to throw any light upon the qualifications of the witness upon the stand.

Mr. OLNEY.—It is a preliminary question, and it has a bearing upon the question of information which the defendants in this case might have in regard to inferences to be drawn from an overage.

Mr. ROCHE.—But the answer to that is, may it please the Court, of course that the defendants in this case, who are acting in good faith, as they apparently claim they were, would have a right to testify on direct examination to what their information was upon these subjects.

The COURT.—The objection will be sustained. The fact that they might have obtained information, does not raise any presumption of innocence.

Mr. OLNEY.—I think, if the Court please, if as a matter of general investigation, and a matter of general information in the community, there is a presumption [2232] "that they were informed in re-



gard to these matters, it would not make any difference; it is a matter of general information and investigation.

The COURT.—What do you mean by general investigation? If it is so general that everybody should know it, then there is no occasion for him to testify at all on that subject.

Mr. OLNEY.—If your Honor please, everybody is not a coal man; I am holding this down, now, to people engaged in the coal business; or, at any rate, to people who are making a study of the subject.

The COURT.—Let him testify as to what he knows. If you have any other witnesses to testify to what they know, you can call on them. The objection will be sustained. [2233]

XLII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to witness Parr upon his direct examination:

“Q. Is there any literature on this subject; that is, have the results of this study into the characteristics of coal in this respect as to changes in weight been put in published form?”

To which ruling of the Court the defendants then and there duly and regularly excepted.

XLIII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to witness Parr upon his direct-examination:

“Q.—I am going to ask you, Professor Parr, if

these specifications in the Government contracts for the purchase of coal contain any specifications as to moisture contents?"

To which ruling of the Court the defendants then and there duly and regularly excepted.

XLIV.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Parr upon his direct examination:

"Mr. OLNEY.—Q. Do you know of your own personal knowledge what these Government contracts call for by way of specifications as to moisture content?"

To which ruling of the Court the defendants then there duly and regularly excepted. [2234]

XLV.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Parr upon his direct examination:

"Q. What is the practice pursued by large purchasers of coal in the East with reference to the purchase of coal and providing as to moisture content?"

To which ruling of the Court the defendants then and there duly and regularly excepted.

XLVI.

The Court erred in sustaining the objection interposed to the third question appearing underlined (italicized in printed transcript) in the following extract from the testimony on direct examination of

the witness Parr:

The witness has testified that the variation in moisture content of coal occurs after the coal has left the mine. He has said that the variation may reach from 1 to 15 per cent.

“Q. Is that 15 per cent a percentage found in actual commercial practice? A. It is.

Q. Is this change in weight recognized commercially? A. It is.

Q. *Can you give an instance of that?*

Mr. ROCHE.—One minute. That is objected to, may it please the Court, as calling for the opinion of the witness and as being something which is not the subject of expert evidence.

The COURT.—The objection is sustained.

Mr. OLNEY.—It is not a matter of opinion; I am asking him to give an instance where it is recognized commercially.

The COURT.—Even that is not a material matter here.”

To which ruling of the Court the defendants then [2235] and there duly and regularly excepted.

## XLVII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Parr upon his direct examination:

“Q. Will you state what you did, Professor Parr, and also state what you found?”

(The witness had immediately before this question was propounded to him testified that he had made experiments or tests with the buckets on the

barges to ascertain how full or what weight of coal they had to contain in order to tip.)

To which ruling of the Court the defendants then and there duly and regularly excepted.

#### XLVIII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Somermeier upon re-direct examination:

“Mr. OLNEY.—Q. You have stated in response to a question of Mr. Sullivan’s that your conclusions on oxidation are conservative. How do your figures and observations compare with those of others?”

The reporter’s transcript immediately following said question reads thus:

“Mr. SULLIVAN.—We object to that as incompetent.

The COURT.—The objection is sustained. He has testified to what he has done as a chemist, and he has given the actual results found by him.

Mr. OLNEY.—That is in response to a question put by them, if your Honor please, where they were questioning the [2236] “conversatism or the accuracy of his figures which were based on his general observation. Now, I take it that he has the right to compare his ideas and his results with those given by other people, according to his knowledge.

The COURT.—Under the same conditions, and doing the same work, or operating on the same thing, and at the same time, perhaps that would be true, but then you would not get any further than you have with his results and his experiments. It is just



the same proposition of supporting one expert by showing that his result corresponded with the result reached by another expert who is not here.

Mr. OLNEY.—No, your Honor, but the witness is here testifying as an expert, and he says, ‘I got these results, this is my opinion in this case’; now, when he is asked whether or not he is sure of that opinion, whether or not it may be too great or too little, then certainly he has got the right to say, and we have the right to bring it out on direct examination, that his opinion, as compared with the opinion of other men, other people in the same line, the general consensus of opinion of investigators in this matter, is on the conservative side.

The COURT.—I don’t think so; the objection is sustained. He has told us what he has done, what results he has obtained, and how he obtained them, and he has stated to us that this is conservative.”

To which ruling of the Court the defendants then and there duly and regularly excepted. [2237]

#### XLIX.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Folsom on his direct examination.

The witness has testified to certain experiments that he made on the scales at Folsom Street:

“Q. What difference would there be, in your opinion, and according to your observation, between weighing with an exactly poised beam and weighing with a beam that was caught as it was coming up, that is, weighing in a commercial manner?”

The reporter's transcript immediately following this question reads:

"Mr. ROCHE.—That is objected to upon the ground that that is not the subject of expert evidence. He has already testified to the actual experiments.

Mr. OLNEY.—The point of the matter is, if the Court please, that there is a difference between weighing with a beam which is just poised below the top of the scale and a weight which is taken as it is testified here the weights are taken, with the beam coming up and being caught before it is permitted to poise, the weigher judging of the speed with which it is coming up.

The COURT.—Is that a matter that can be determined by actual observation?

Mr. OLNEY.—I think not. Well, it is a matter as to which you could not go down there and say in any particular case, your Honor, but it is a matter that a [2238] "person watching it could form an estimate as to what the difference would be.

The COURT.—The objection is sustained."

To which ruling of the Court the defendants then and there duly and regularly excepted.

L.

The Court erred in sustaining the objection interposed by the plaintiff to the question underlined (italicized in printed transcript) in the following extract from the redirect examination of the witness Folsom:

"Q. You have been cross-examined here about tests which were made by soaking the coal; did you

make any tests outside of this test with the bin, to which you have testified, where the coal was not soaked, but was merely exposed to the weather?

A. Yes, sir, I made a number of those tests.

A. And did those tests show the same results?

Mr. SULLIVAN.—We object to that, your Honor, as not redirect.

The COURT.—Oh, we can't let this matter be reopened now.

Mr. OLNEY.—I am not endeavoring to reopen it, your Honor.

The COURT.—We never would get through in a thousand years.

Mr. SULLIVAN.—This is not proper redirect examination. [2239]

“Mr. OLNEY.—If your Honor, please, they picked out certain tests, here, tests of soaking the coal; running along with them, were tests where the coal was exposed to the weather; I simply want to bring out the fact that these tests were not confined to the tests of soaking the coal, that there were other tests, where the coal was simply exposed to the weather.

The COURT.—The objection is sustained. You made the case you desired to make when you put him on the stand.”

To which ruling of the Court the defendants then and there duly and regularly excepted.

## LI.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Jansen on his redirect examination.

“Q. And when you say that coal came in the yard and remained for a short time, that it increased to the extent of two per cent, you mean that was the average increase of the entire stock of coal?”

To which ruling of the Court the defendants then and there duly and regularly excepted.

### LII.

The Court erred in sustaining the objection interposed by the plaintiff to the question underlined (italicized in printed transcript) in the extract below, propounded upon direct examination of the witness Moreno, formerly agent of the Pacific Mail S. S. Company at Acapulco, Mexico: [2240]

“Q. And what experience did you have with the coal overrunning?

Mr. ROCHE.—That question is objected to, may it please the Court, as immaterial, irrelevant and incompetent, and upon the further ground that no proper foundation has been laid, and no similarity exists in the method described by the witness as to the method of weighing coal imported into the port of San Francisco, or sold by the dealers in San Francisco, and upon the further ground that no proper foundation has been laid in this—that it has not been shown that the climatic conditions there have been and are the same as the climatic conditions have been and are in San Francisco.

The COURT.—The objection is sustained.

Mr. KNIGHT.—Q. *Will you state how the winter climate at Acapulco compares with the winter climate at San Francisco, taking for instance this winter as an illustration?*



Mr. ROCHE.—That question is objected to upon the same grounds, particularly in view of the fact that the witness has already described the method of weighing there.

Mr. McCUTCHEN.—If your Honor please, it is important here unless it is conceded now,—I don't know whether it is or not, it may be at this stage of the case, that the addition of moisture increases the weight of coal. It makes no difference whether that moisture is added in San Francisco or in Acapulco, if the experience of the witness shows that the addition of moisture does account for a considerable exchange of weight, we have the right to show that experience, and particularly with the class of coals we are [2241] dealing with here.

The COURT.—The objection is sustained. We have had testimony—this is only cumulative, and it would be cumulative upon conditions that in the nature of which are not the same as the conditions here.

Mr. STANLEY MOORE.—An exception.

Mr. KNIGHT.—That is, I understand your Honor's ruling to cover any testimony which would go to show what the behavior of coal similar to coal situated in Acapulco is because it was there in Acapulco and subject to a different method of weighing in Acapulco than the method that has been in vogue here.

The COURT.—Yes, and different climatic conditions.

Mr. KNIGHT.—With your Honor's permission I will ask a question touching the climatic conditions,

so as to remove that feature of the objection. I will ask the witness to state what is the comparative winter climate of Acapulco and San Francisco?

Mr. SULLIVAN.—How far is that from the Equator?

Mr. KNIGHT.—Oh, I don't know how far Acapulco is from the Equator.

A. I think it is in 17 north.

Q. And what are we here?

Mr. SULLIVAN.—37, is it not?

Mr. KNIGHT.—I don't know.

Q. How does the rainfall compare with the rainfall, for instance up to this time, this winter in San Francisco, how does the rainfall there compare with our [2242] rainfall during this winter in San Francisco?

A. I never have seen it rain as heavily as it has in the last month in San Francisco, in the month of January.

Q. Do you know what the average rainfall in Acapulco is in the winter? A. No, sir, I couldn't say.

Q. But you think the winter is not as severe there from the standpoint of rain as it has been in San Francisco this winter? A. No, sir.

Q. Is that coal stored in the open?

A. Yes, sir, it is stored in the open.

Q. Do you know where that coal comes from—that is, whether the Western Fuel Company sells any of that coal to the Pacific Mail Steamship Company?

A. They have sold coal to the Pacific Mail Steamship Company, yes, sir.

Q. What kind of coal?

A. New Wellington coal.

Mr. KNIGHT.—Now, your Honor, while of course it is cumulative in a sense because it simply goes to sustain other witnesses who have been offered, yet in view of the particular experience of this witness and the particular records which he kept of each particular kind of coal, we offer this evidence to the jury for the purpose of demonstrating the fact which we contend for that coal does increase by moisture to the extent which this witness will testify.

Mr. ROCHE.—Now, just a minute, if your Honor please.

The COURT.—The objection is sustained.”

To which ruling of the Court the defendants then and there duly and regularly excepted. [2243]

#### LIII.

The Court erred in overruling the objection interposed by the defendants to the following question propounded to the witness, defendant E. H. Mayer, upon his cross-examination:

“Q. When they (referring to the custom-house weighers) did work overtime, did you not, while you were on the bunkers, pay the custom-house officers overtime, between those dates, between 1906 and 1912?”

To which ruling of the Court the defendants then and there duly and regularly excepted.

#### LIV.

The Court erred in overruling the objection interposed by the defendants to the following question propounded to the witness, defendant E. H. Mayer, upon his cross-examination:

“Q. At that time (referring to the time between 1906 and 1912 when the witness paid the Government custom-house weighers overtime) did you know that the weighers who worked overtime were always allowed by the Government a day off for overtime at night?”

To which ruling of the Court the defendants then and there duly and regularly excepted.

LV.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Tidwell upon his further cross-examination:

“Q. I want to ask you this question, Mr. Tidwell: Have you referred the question of the increase in the weight of coal due to moisture to the United States Bureau of Mines?”

To which ruling of the Court the defendants then and there duly and regularly excepted. [2244]

LVI.

The Court erred in sustaining the objections interposed by the plaintiff to the following question propounded to the witness Tidwell during his direct examination as a witness called by the defendants:

“Q. Do you recall when it was you next talked with Mr. Powers about this matter?”

To which ruling of the Court the defendants then and there duly and regularly excepted.

The immediately preceding testimony leading up to and giving the context of this question was as follows:

“Mr. STANLEY MOORE.—Q. Mr. Tidwell, did



you ever have any further conversation with Mr. Powers in which you stated to him that this proportion of the reward would come out of a civil suit to follow after the trial of the criminal suit?

A. I do not recall any such conversation as that.

Q. When did you tell Mr. Powers that he might expect to receive the reward?

A. I don't know that I ever told him, for the reason that I haven't the authority to grant the reward.

Q. You say you have not the authority to grant the reward?      A. No, sir.

Q. Have you had any correspondence with respect to the matter of reward?

The COURT.—This is not impeaching, Mr. Moore; this is not anything except fishing.

Mr. STANLEY MOORE.—Well, your Honor, even so I think we are entitled to know that. [2245]

The COURT.—I don't think so. If you put a witness on the stand you are presumed to know what he is going to testify to.

Mr. STANLEY MOORE.—Your Honor, that is a violent assumption in the case of Mr. Tidwell.

The COURT.—Then it is your mistake in putting him on the stand.

Mr. STANLEY MOORE.—Your Honor, it did occur to me to go and ask Mr. Tidwell about these things, but I thought it would be a delicate matter for me to do so, and I refrained from doing so on that account.

The COURT.—I have given you latitude enough in this matter.

Mr. STANLEY MOORE.—Very well, your Honor.”

(Here follows immediately the question first above quoted and objected to by the plaintiff.)

LVII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness, defendant F. C. Mills, upon his direct examination :

Mr. STANLEY MOORE.—Q. Now, Mr. Mills, the public accountants examining these books of yours (referring to the hereinbefore mentioned—see Assignments XIV to XVII inclusive—dock diaries or journals kept by the defendant Mills) state that there is an average overrun on those barges during the entire year under investigation here of 4.88 per cent; I want to ask you whether it is possible for one of those barges to overrun 20, or 30, or 40 per cent?”

To which ruling of the Court the defendants then and there duly and regularly excepted. [2246]

LVIII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness, defendant F. C. Mills, upon his direct examination :

“Mr. STANLEY MOORE.—Q. Now, for example, they mentioned the ‘Nanaimo’ in February, 1906, and they credit the ‘Nanaimo’ with an overrun of 32.5 per cent. I want to ask you this question, and don’t answer it unless the court tells you that you may: Whether or not it would be possible to trip those buckets and dump the coal on the ‘Nanaimo’ to

the extent that it would overrun the quantity of coal actually received by her to the extent of 32.5 per cent?"

To which ruling of the Court, the defendants then and there duly and regularly excepted.

### LIX.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness, defendant F. C. Mills, upon his direct examination:

"Q. How important is it, so far as the business of the company is concerned that absolutely accurate track be kept of an account of the coal that is laden into the barge?

Mr. ROCHE.—That is objected to as immaterial.

Mr. STANLEY MOORE.—I will put it so far as the discharge of his duties are concerned.

The COURT.—That does not make any difference, whether it is important or not; the question is has it been done.

The objection is sustained."

To which ruling of the Court the defendants then and there duly excepted. [2247]

and there duly and regularly excepted. [2247]

### LX.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness, defendant F. C. Mills, upon his direct examination:

"Q. How much do you think any of those barges ever did as long as you have been connected with this company actually and as a matter of fact exceed by its out-turn weight the amount that had been charged into it?

Mr. ROCHE.—That is objected to as calling for the opinion and the conclusions of the witness.

Mr. STANLEY MOORE.—I think he can give that, your Honor.

The COURT.—The objection is sustained.”

To which ruling of the Court the defendants then and there duly and regularly excepted.

LXI.

The Court erred in abusing its judicial discretion in denying the motion of the above-named defendants, and of each of them, for a new trial hereof; and, in this connection, in refusing to hold and decide, as next hereinafter set forth in sections (1), (2), (3), (4), (5), (6), (7) and (8),

(1) That the verdict herein was contrary to the evidence adduced upon the trial hereof;

(2) That said evidence was insufficient to justify said verdict;

(3) That the evidence herein was insufficient to [2248] justify the verdict that each or any of said defendants had entered into a conspiracy set forth in the indictment herein, or into any part of said conspiracy;

(4) That the evidence herein was insufficient to justify the said verdict that each or any of the said defendants performed any of the overt acts set forth in said indictment, or any other acts, in pursuance or furtherance of said alleged conspiracy;

(5) That said verdict was contrary to law for the reasons in this Assignment of Errors particularly set forth;

(6) That during the course of the trial hereof



said jury, and certain members thereof, received evidence out of court prejudicial to these defendants, and each of them, other than that resulting from a view of the premises involved herein, which prevented said defendants, and each of them, from receiving fair and due consideration on the trial hereof; and in this respect these defendants particularly specify the following evidence set out in the affidavits presented to the Court in connection with defendants' motion for a new trial hereof:

(a) The following entitled newspaper articles or editorials appearing on the dates specified in the San Francisco Examiner: "Coal Shipments and Atmosphere," in the issue of December 17, 1913; "Scientific Discovery Ruined by Cupid," in the issue of December 18, 1913; "He Earned the Money," in the issue of February 11, 1914.

(b) The newspaper article or cartoon entitled "Breaking Even. If the Consumers Ever Get a Chance to Sell a Ton of Coal to the Coal Man."

(c) The various articles in the newspapers of [2249] San Francisco and the neighboring cities purporting to state the proceedings taken upon the trial hereof.

(d) The newspaper article appearing in the Oakland Tribune in the issue of Sunday, February 8, 1914, entitled "Recalls Sugar Fraud History," signed "The Knave."

(On the 19th day of March, 1914, during the presentation of the motion on behalf of the defendants for a new trial herein, it was stipulated and admitted in open Court by counsel for plaintiff that the certain

Mr. Stuart Masters, referred to at intervals in the testimony upon the trial of this cause, was *the* Mr. Stuart Masters who was then seated in the courtroom as representative of, and as reporting the proceedings in this case for, the San Francisco Examiner, and that he had so represented and so reported the proceedings for said San Francisco Examiner during most of the trial of this case.)

(7) That said jury was, and certain members thereof were, guilty of misconduct by which such a fair and due consideration of the above-entitled cause was prevented, to the prejudice of these defendants, and each of them, as entitled each of said defendants to a new trial hereof, and such misconduct was committed by said jury, and certain members thereof, in the following respects, set out more at length in the affidavits hereinbefore and above referred to:

(a) By reading and circulating, or reading or circulating, the aforesaid newspaper article entitled "Coal Shipments and Atmosphere,"

(b) Also the aforesaid newspaper article entitled "Scientific Discovery Ruined by Cupid," [2250]

(c) Also the aforesaid newspaper article entitled "He Earned the Money,"

(d) Also the aforesaid newspaper article or cartoon entitled "Breaking Even. If the Consumers Ever Get a Chance to Sell a Ton of Coal to the Coal Man,"

(e) Also the aforesaid newspaper article entitled "Recalls Sugar Fraud History,"

(f) By discussing said cause among themselves, contrary to said Court's instructions, before said

cause was finally submitted to them for decision, and particularly by statements prejudicial to these defendants, and to each of them, made by one or more of said jurors to others of said jury before said cause was finally submitted to them for decision to the effect that said cause, or the method of conducting the business of the Western Fuel Company, with which these defendants were connected, or the method of operation of these defendants were crooked and similar to that alleged to have been employed by the American Sugar Company or Sugar Trust,

(g) By intimidation practised upon the juror, R. E. Herdman, so as to induce or compel him to join in a verdict of guilty as to each of these defendants.

(8) That the defendants, and each of them, were deprived of such fair and due consideration of their cause herein as they and each of them were of right entitled to, by the urgent pressure and insistence of the Court during the later stages of the trial herein that said trial should be brought to a speedy conclusion (and this after the plaintiff had been allowed ample time to put in its affirmative [2251] case) whereby the defendants had to forego placing certain important witnesses and notably certain stevedores upon the barges of the Western Fuel Company upon the stand (as in more detail appears in the affidavit of Stanley Moore, Esq., presented to Court upon defendants' motion for a new trial hereof, and whereby the cause of the defendants, and each of them, herein was gravely and materially imperiled and prejudiced—in the light of which circumstance and of other considerations hereinabove in this as-

signment specified it was error on the part of said Court to abuse its judicial discretion in denying the defendants herein and each of them a new trial hereof.

“The COURT.—I have been lulled into a sense of security so often, that I am going to take the matter into my own hands. We will take a recess until Friday morning. This case is going to be finished Friday night, if it takes till midnight.”

(9) That counsel for the plaintiff were guilty of manifest misconduct in their respective closing addresses to and in the presence of the jury upon the conclusion of the evidence herein, which misconduct was so prejudicial to the defendants herein and each of them as to entitle said defendants, and each of them, to a new trial hereof; and the portions of said addresses appearing hereinabove on pages 3 to 19 of this Assignment of Errors are hereby assigned as such misconduct. [2252]

WHEREAS, by the law of the land, said judgment ought to be given for said James B. Smith, F. C. Mills and E. H. Mayer, plaintiffs in error, and against the United States of America, defendant in error, said plaintiffs in error, James B. Smith, F. C. Mills and E. H. Mayer do now pray the judgment herein rendered against them and each of them to be reversed and annulled and altogether held for nothing, and the sentence herein imposed upon them, and each of them, respectively, to be set aside and held for naught, and that they, and each of them, be restored to all things which they have lost by occasion of the said judgment, and that they be afforded



such and any and all other relief as may be meet in the premises.

Dated at San Francisco, California, May 18, 1914.

McCUTCHEN, OLNEY & WILLARD,  
STANLEY MOORE,  
A. P. BLACK,  
SAMUEL KNIGHT,

Attorneys for Said Defendants, James B. Smith,  
F. C. Mills and E. H. Mayer.

[Endorsed]: Filed May 18, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2253]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN L. HOWARD et al.,

Defendants.

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Order Allowing Writ of Error, Staying Sentence and  
Execution, etc.**

Come now, James B. Smith, F. C. Mills and E. H. Mayer, defendants herein, and file herein and present

to the Court their petition praying for the allowance of a Writ of Error from the United States Circuit Court of Appeals, for the Ninth Circuit, to have the above-entitled court, and submit herewith the Assignment of Errors intended to be urged by them; [2254] praying also that a transcript of the record, proceedings and papers in this cause, duly authenticated, be sent to said United States Circuit Court of Appeals for the Ninth Circuit, and praying also that meanwhile all further proceedings in the above-entitled district court be suspended, stayed and superseded, and that sentence and execution herein be stayed until the final disposition of said Writ of Error in the aforesaid United States Circuit Court of Appeals.

NOW THEREFORE, in consideration of the premises, and the Court being fully advised, and each of the above-named defendants having heretofore submitted to the above-entitled court his respective bond for appearance in the United States District Court, for the Northern District of California, or in the United States Circuit Court of Appeals for the Ninth Circuit, or in the Supreme Court of the United States of America, as may hereafter in this cause be ordered, in the sums following, to wit, defendant, James B. Smith, in the sum of ten thousand (10,000) dollars, defendant, F. C. Mills, in the sum of five thousand (5,000) dollars, and defendant, E. H. Mayer, in the sum of five thousand (5,000) dollars (said sums being the amount of bail heretofore fixed by this Court for each of said defendants, respectively, and said bonds, and each of them, having been

heretofore accepted and approved by this Court;

IT IS HEREBY ORDERED that the aforesaid Writ of Error be, and the same is, hereby allowed; and

IT IS FURTHER ORDERED that a transcript of the record, proceedings and papers in this cause, duly authenticated, [2255] be sent to the aforesaid United States Circuit Court of Appeals, for the Ninth Circuit; and

IT IS FURTHER ORDERED that all further proceedings in this above-entitled district court be suspended, stayed and superseded until the final disposition of said Writ of Error in the aforesaid United States Circuit Court of Appeals, for the Ninth Circuit; and

IT IS FURTHER ORDERED that sentence and execution herein be stayed until the final disposition of said Writ of Error in the aforesaid United States Circuit Court of Appeals, for the Ninth Circuit; and

IT IS FURTHER ORDERED that the bond for costs upon the Writ of Error herein be, and it is hereby fixed at the sum of Five Hundred Dollars, said bond to be entered into jointly by the three defendants hereinabove named.

Dated May 18, 1914.

M. T. DOOLING,

Judge of the United States District Court for the Northern District of California.

[Endorsed]: Filed May 18, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2256]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. —.

JAMES B. SMITH, F. C. MILLS and E. H.  
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Writ of Error (Copy).**

United States of America,—ss.

The President of the United States of America, to  
the Honorable, the Judges of the District Court  
of the United States, for the Northern District  
of California, Greeting:

Because, in the record and proceedings, as also in  
the rendition of the judgment of a plea which is in  
the said District Court, before the Honorable  
Maurice T. Dooling, one of you, between the United  
States of America, plaintiff and defendant in error,  
and James B. Smith, F. C. Mills and E. H. [2257]  
Mayer, defendants and plaintiffs in error, a manifest  
error hath happened, to the great damage of the said  
plaintiffs in error, and each of them, as by their com-  
plaint appears:

We, being willing that error, if any hath been,  
should be duly corrected, and full and speedy justice  
done to the parties aforesaid in this behalf, do com-  
mand you, if judgment be therein given, that then,



under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 18th day of May, in the year of our Lord one thousand nine hundred and fourteen.

[Seal]

W. B. MALING,  
Clerk U. S. District Court.  
By C. W. Calbreath,  
Deputy Clerk.

Allowed by

M. T. DOOLING,  
U. S. District Judge. [2258]

Service of the above Writ of Error made this 18th day of May, in the year of our Lord one thousand nine hundred and fourteen, upon the District Court of the United States, for the Northern District of California, by filing with me, as clerk of said court,

a duly certified copy of said Writ of Error.

[Seal]

W. B. MALING,

Clerk of the District Court of the United States for  
the Northern District of California.

By C. W. Calbreath,

Deputy Clerk.

[Endorsed]: Filed May 18, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2259]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. —.

JAMES B. SMITH, F. C. MILLS and E. H.  
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Citation on Writ of Error (Copy).**

United States of America,—ss.

The President of the United States, to the United  
States of America, and to MATTHEW I. SUL-  
LIVAN, Esquire, and THEODORE J.  
ROCHE, Esquire, Special Assistants to the At-  
torney General of the United States, Greeting:

You are hereby cited and admonished to be and  
appear at a United States Circuit Court of Appeals  
for the Ninth Circuit, to be holden at the City of San  
Francisco, in the State of California, within thirty

days from the date hereof, pursuant to a Writ of Error duly issued and [2260] now on file in the clerk's office of the United States District Court for the Northern District of California, wherein James B. Smith, F. C. Mills and E. H. Mayer are plaintiffs in error, and the United States of America is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 18th day of May, in the year of our Lord one thousand nine hundred and fourteen.

M. T. DOOLING,

United States District Judge.

[Seal]

Attest: W. B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk. [2261]

Due and legal service of the above and foregoing citation, and receipt of a copy thereof, is hereby accepted and admitted, in the city and county of San Francisco, State of California, this 18th day of May, A. D. 1914.

MATT. I. SULLIVAN,

THEO J. ROCHE,

Special Assistants to the Attorney General of the United States.

[Endorsed]: Filed May 18, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2262]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN L. HOWARD et al.,

Defendants.

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Admission of Service [of Copies of Petition for Writ  
of Error, etc.].**

Due and legal service this day of copies of the following papers and documents in the above-entitled cause is hereby accepted and admitted:

Petition for Writ of Error; Order Allowing Writ of Error; Sentence Staying Sentence and Execution, etc.; Writ of Error; Cost Bond.

Dated at San Francisco, California, this 18th day of May, A. D. 1914.

SULLIVAN & ROCHE,

Special Assistants to the Attorney General of the  
United States.

[Endorsed]: Filed May 18, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2263]



*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation and Order Continuing Time for Settlement of Defendants' Bill of Exceptions to and Into the July Term, 1914.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time for the above-entitled Court to settle the Bill of Exceptions of defendants, James B. Smith, F. C. Mills and E. H. Mayer, upon Writ of Error herein, may be continued and extended from the present March term, 1914, to and into the next succeeding July term, 1914, of said Court.

Dated at San Francisco, Cal., May 29th, 1914.

MATT. I. SULLIVAN,  
THEO. J. ROCHE,

Special Assistants to the Attorney General of the  
United States.

EDW'D J. McCUTCHEN,  
WARREN OLNEY, Jr.,  
SAM'L KNIGHT,  
STANLEY MOORE,  
A. P. BLACK,

Attorneys for Defendants. [2264]

Now on this day in the March term, 1914, pursuant to the above stipulation, and good cause appearing therefor,

IT IS HEREBY ORDERED that the time for this Court to settle the Bill of Exceptions of the above-named defendants upon Writ of Error herein be and the same is hereby continued and extended from the present March term, 1914, to and into the next succeeding July term, 1914, of this Court.

Dated at San Francisco, Cal., May 29, 1914.

M. T. DOOLING,  
Judge of said Court.

[Endorsed]: Filed May 29, 1914, at 6 o'clock and 55 min. P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [2265]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation and Order Continuing Time for Settlement of Defendants' Bill of Exceptions to and Into the November Term, 1914.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time for the above-entitled Court to

settle the Bill of Exceptions of defendants, James B. Smith, F. C. Mills and E. H. Mayer, upon Writ of Error herein, may be continued and extended from the present July term, 1914, to and into the next succeeding November term, 1914, of said Court.

Dated at San Francisco, Cal., October 27th, 1914.

THEO. J. ROCHE,

Special Assistant to the Attorney General of the  
United States.

McCUTCHEN & OLNEY,

SAMUEL KNIGHT,

STANLEY MOORE,

A. P. BLACK,

PETER F. DUNNE,

Attorneys for Defendants. [2266]

Now on this day in the July term, 1914, pursuant to the above stipulation, and good cause appearing therefor,

IT IS HEREBY ORDERED that the time for this Court to settle the Bill of Exceptions of the above-named defendants upon Writ of Error herein be and the same is hereby continued and extended from the present July term, 1914, to and into the next succeeding November term, 1914, of this Court.

Dated at San Francisco, Cal., October 28th, 1914.

M. T. DOOLING,

Judge of said Court.

[Endorsed]: Filed Oct. 28, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2267]

*In the District Court of the United States, for the  
Northern District of California.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time for  
Defendants to Prepare, Serve and File a Bill of  
Exceptions, and for Stay of Execution of  
Judgment to June 1, 1914.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the defendants, James B. Smith, F. C., Mills and E. H. Mayer, herein, may have to and including the first day of June, 1914, within which to prepare, serve and file a bill of exceptions in the above-entitled cause;

IT IS FURTHER STIPULATED AND AGREED by and between the respective parties hereto that execution of the judgment rendered against the above-named defendants in said above-entitled cause may be stayed to and including the said first day of June, 1914.



Dated San Francisco, Cal., April 16th, 1914.

M. I. SULLIVAN,

THEO. J. ROCHE,

Special Assistants to the United States Attorney  
General.

McCUTCHEN, OLNEY & WILLARD,

STANLEY MOORE,

SAMUEL KNIGHT,

A. P. BLACK,

Attorneys for Defendants.

It is so ORDERED by the Court.

Dated: April 17th, 1914.

WM. W. MORROW,

Judge.

[Endorsed]: Filed Apr. 17, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2268]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time of  
Defendants to Prepare, Serve, Settle and File  
Their Bill of Exceptions to July 1, 1914.**

IT IS HEREBY STIPULATED AND  
AGREED by and between the respective parties

hereto that the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, may have to and including the 1st day of July, 1914, within which to prepare, serve, settle and file their Bill of Exceptions upon Writ of Error in the above-entitled cause.

Dated at San Francisco, Cal., May 29th, 1914.

MATT. I. SULLIVAN,

THEO. J. ROCHE,

Special Assistants to the Attorney General of the United States.

EDW'D J. McCUTCHEN,

WARREN OLNEY, Jr.,

SAM'L KNIGHT,

STANLEY MOORE,

A. P. BLACK,

Attorneys for Defendants.

It is so ORDERED by the Court.

Dated at San Francisco, Cal., May 29, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed May 29, 1914, at 6 o'clock and 55 min. P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [2269]

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*In the District Court of the United States, for the Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time of Defendants to Prepare, Serve, Settle and File Their Bill of Exceptions to August 1, 1914.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, may have to and including the 1st day of August, 1914, within which to prepare, serve, settle and file their Bill of Exceptions upon Writ of Error in the above-entitled cause.

Dated at San Francisco, Cal., June 23d, 1914.

M. I. SULLIVAN,

THEO. J. ROCHE,

Special Assistants to the Attorney General of the United States.

EDWARD J. McCUTCHEN,

WARREN OLNEY, Jr.,

SAMUEL KNIGHT,

STANLEY MOORE,

A. P. BLACK,

Attorneys for Defendants.

It is so ORDERED by the Court.

M. T. DOOLING,

Judge.

Dated at San Francisco, Cal., June 23d, 1914.

[Endorsed]: Filed Jun. 23, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2270]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time of  
Defendants to Prepare, Serve, Settle and File  
Their Bill of Exceptions to August 15, 1914.**

IT IS HEREBY STIPULATED AND  
AGREED by and between the respective parties  
hereto that the defendants herein, James B. Smith,  
F. C. Mills and E. H. Mayer, may have to and in-  
cluding the 15th day of August, 1914, within which  
to prepare, serve, settle and file their Bill of Excep-  
tions upon Writ of Error in the above-entitled cause.

Dated at San Francisco, California, July 30th,  
1914.

M. I. SULLIVAN,  
THEO. J. ROCHE,

Special Assistants to the Attorney General of the  
United States.

EDWARD J. McCUTCHEN,  
WARREN OLNEY, Jr.,  
SAMUEL KNIGHT,  
STANLEY MOORE,  
A. P. BLACK,

Attorneys for Defendants.



It is so ORDERED by the Court.

Dated at San Francisco, California, July 31st,  
1914.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed Jul. 31, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2271]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time for  
Defendants to Prepare and Serve Upon the  
Adverse Party Draft of Their Proposed Bill of  
Exceptions to September 1, 1914.**

IT IS HEREBY STIPULATED AND  
AGREED by and between the respective parties  
hereto that the defendants herein, James B. Smith,  
F. C. Mills and E. H. Mayer, may have to and includ-  
ing the first day of September, 1914, within which  
to prepare and serve upon the adverse party herein  
a draft of their Proposed Bill of Exceptions upon  
Writ of Error in the above-entitled cause.

Dated at San Francisco, California, August 12,  
1914.

MATT. I. SULLIVAN,  
THEO. J. ROCHE,

Assistants to the Attorney General of the United  
States.

EDW'D J. McCUTCHEN,  
WARREN OLNEY, Jr.,  
SAMUEL KNIGHT,  
STANLEY MOORE,  
A. P. BLACK,

Attorneys for Defendants.

It is so ORDERED by the Court.

Dated at San Francisco, California, August 13th,  
1914.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Aug. 13, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2272]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

JAMES B. SMITH et al.,  
Defendants.

**Stipulation (and Order) Extending Time for  
Defendants to Prepare and Serve Upon the  
Adverse Party Draft of Their Proposed Bill of  
Exceptions to September 15, 1914.**

IT IS HEREBY STIPULATED AND  
AGREED by and between the respective parties  
hereto that the defendants herein, James B. Smith,  
F. C. Mills and E. H. Mayer, may have to and in-  
cluding the 15th day of September, 1914, within  
which to prepare and serve upon the adverse party  
herein a draft of their Proposed Bill of Exceptions  
upon Writ of Error in the above-entitled cause.

Dated San Francisco, California, August 29th,  
1914.

THEO. J. ROCHE,  
Assistants to the Attorney General of the United  
States.

EDWARD J. McCUTCHEN,  
WARREN OLNEY, Jr.,  
SAMUEL KNIGHT,  
STANLEY MOORE,  
A. P. BLACK,

Attorneys for Defendants.

IT IS SO ORDERED BY THE COURT.

Dated: San Francisco, California, Sept. 1st, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Sep. 1, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2273]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time for  
Defendants to Prepare and Serve Upon the  
Adverse Party Draft of Their Proposed Bill of  
Exceptions to October 1, 1914.**

IT IS HEREBY STIPULATED AND  
AGREED by and between the respective parties  
hereto that the defendants herein, James B. Smith,  
F. C. Mills and E. H. Mayer, may have to and in-  
cluding the 1st day of October, 1914, within which  
to prepare and serve upon the adverse party herein  
a draft of their Proposed Bill of Exceptions upon  
Writ of Error in the above-entitled cause.

Dated San Francisco, Cal., September 11th, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United  
States.

EDWARD J. McCUTCHEN,  
WARREN OLNEY, Jr.,  
SAMUEL KNIGHT,  
STANLEY MOORE,  
A. P. BLACK,

Attorneys for Defendants.



IT IS SO ORDERED BY THE COURT.

Dated : San Francisco, Cal., September 15th, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Sep. 15, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2274]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time for  
Defendants to Prepare and Serve Upon the  
Adverse Party Draft of Their Proposed Bill of  
Exceptions to October 15, 1914.**

IT IS HEREBY STIPULATED AND  
AGREED by and between the respective parties  
hereto that the defendants herein, James B. Smith,  
F. C. Mills and E. H. Mayer, may have to and in-  
cluding the fifteenth day of October, 1914, within  
which to prepare and serve upon the adverse party  
herein a draft of their Proposed Bill of Exceptions  
upon Writ of Error in the above-entitled cause.

Dated San Francisco, Cal., Sept. 29th, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for Defendants.

IT IS SO ORDERED BY THE COURT:

Dated: San Francisco, Cal., Sept. 30th, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Sep. 30, 1914. W. B. Maling,  
Clerk. By Lyle S. Morris, Deputy Clerk. [2275]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time for  
Defendants to Engross and Have Settled the Bill  
of Exceptions to November 15, 1914.**

IT IS HEREBY STIPULATED AND AGREED  
by and between the respective parties hereto that  
the defendants herein, James B. Smith, F. C. Mills  
and E. H. Mayer, may have to and including the  
15th day of November, 1914, within which to engross

and have settled the Bill of Exceptions upon Writ of Error in the above-entitled cause.

Dated: San Francisco, Cal., October 15th, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United States.

McCUTCHEN, OLNEY & WILLARD,  
PETER F. DUNNE,  
STANLEY MOORE,

Attorneys for Defendants.

IT IS SO ORDERED BY THE COURT.

Dated: San Francisco, Cal., October 15, 1914.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed Oct. 15, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2276]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time for  
Defendants to Engross and Have Settled the Bill  
of Exceptions to December 1, 1914.**

IT IS HEREBY STIPULATED AND AGREED  
by and between the respective parties hereto that  
the defendants herein, James B. Smith, F. C. Mills

and E. H. Mayer, may have to and including the 1st day of December, 1914, within which to engross and have settled the Bill of Exceptions upon Writ of Error in the above-entitled cause.

Dated: San Francisco, Cal., November 13, 1914.

THEODORE J. ROCHE,

Assistant to the Attorney General of the United States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for Defendants.

IT IS SO ORDERED BY THE COURT.

Dated: San Francisco, Cal., November 13th, 1914.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Nov. 13, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2277]

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*In the District Court of the United States, for the Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time for Defendants to Engross and Have Settled the Bill of Exceptions to December 15, 1914.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that



the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, may have to and including the 15th day of December, 1914, within which to engross and have settled the Bill of Exceptions upon Writ of Error in the above-entitled cause.

Dated: San Francisco, Cal., November 30th, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for Defendants.

IT IS SO ORDERED BY THE COURT.

Dated: San Francisco, Cal., November 30th, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Nov. 30, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2278]

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*In the District Court of the United States, for the Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time for Defendants to Engross and Have Settled the Bill of Exceptions to January 15, 1914.**

**IT IS HEREBY STIPULATED AND AGREED**

by and between the respective parties hereto that the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, may have to and including the 15th day of January, 1915, within which to engross and have settled the Bill of Exceptions upon Writ of Error in the above-entitled cause.

Dated: San Francisco, Cal., December 15th, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for Defendants.

IT IS SO ORDERED BY THE COURT.

Dated: San Francisco, Cal., December 15th, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Dec. 15, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2279]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233,

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time for  
Defendants to Engross and Have Settled the Bill  
of Exceptions to January 20, 1915.**

IT IS HEREBY STIPULATED AND AGREED  
by and between the respective parties hereto that  
the defendants herein, James B. Smith, F. C. Mills  
and E. H. Mayer, may have to and including the  
20th day of January, 1915, within which to engross  
and have settled the Bill of Exceptions upon Writ of  
Error in the above-entitled cause.

Dated: San Francisco, Cal., January 14th, 1915.

THEO. J. ROCHE,  
Assistant to the Attorney General of the United  
States.

PETER F. DUNNE,  
STANLEY MOORE,  
Attorneys for said Defendants.

IT IS SO ORDERED BY THE COURT.

Dated: San Francisco, Cal., January 15th, 1915.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Jan. 15, 1915. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2280]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
JAMES B. SMITH et al.,  
Defendants.

**Stipulation (and Order) Enlarging Time of  
Defendants to October 1, 1914, to File Record  
and Docket Case.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time of the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, may be enlarged to and including the first day of October, 1914.

Dated: San Francisco, California, September 15th, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United States.

EDWARD J. McCUTCHEN,  
WARREN OLNEY, Jr.,  
SAMUEL KNIGHT,  
STANLEY MOORE,  
A. P. BLACK,

Attorneys for Defendants, James B. Smith, F. C. Mills and E. H. Mayer. [2281]



*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Order Enlarging Time of Defendants to October 1,  
1914, to File Record and Docket Case.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,

IT IS HEREBY ORDERED that the time of the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, be and the same is hereby enlarged to and including the first day of October, 1914.

Dated: San Francisco, California, September 15, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Sep. 15, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2282]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation Enlarging Time of Defendants to  
October 15, 1914, to File Record and Docket  
Case.**

IT IS HEREBY STIPULATED AND AGREED  
by and between the respective parties hereto that the  
time of the defendants herein, James B. Smith, F. C.  
Mills and E. H. Mayer, for filing the record hereof  
and docketing this case on writ of error from the  
United States Circuit Court of Appeals for the Ninth  
Circuit to the District Court of the United States for  
the Northern District of California, may be enlarged  
to and including the fifteenth day of October, 1914.

Dated: San Francisco, California, Sept. 29th, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United  
States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for Defendants James B. Smith, F. C.  
Mills and E. H. Mayer. [2283]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Order Enlarging Time of Defendants to October 15,  
1914, to File Record and Docket Case.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,

IT IS HEREBY ORDERED that the time of the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, be and the same is hereby enlarged to and including the fifteenth day of October, 1914.

Dated: San Francisco, California, Sept. 30th, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Sep. 30, 1914. W. B. Maling,  
Clerk. By Lyle S. Morris, Deputy Clerk. [2284]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

JAMES B. SMITH et al.,  
Defendants.

**Stipulation Enlarging Time of Defendants to  
November 15, 1914, to File Record and Docket  
Case.**

IT IS HEREBY STIPULATED AND AGREED  
by and between the respective parties hereto that the  
time of the defendants herein, James B. Smith, F. C.  
Mills and E. H. Mayer, for filing the record hereof  
and docketing this case on writ of error from the  
United States Circuit Court of Appeals for the Ninth  
Circuit to the District Court of the United States for  
the Northern District of California, may be enlarged  
to and including the 15th day of November, 1914.

Dated, San Francisco, Cal., October 15th, 1914.

THEO. J. ROCHE,  
Assistant to the Attorney General of the United  
States.

McCUTCHEN, OLNEY & WILLARD,  
PETER F. DUNNE,  
STANLEY MOORE,

Attorneys for Defendants James B. Smith, F. C.  
Mills and E. H. Mayer. [2285]



*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Order Enlarging Time of Defendants to November  
15, 1914, to File Record and Docket Case.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,

IT IS HEREBY ORDERED that the time of the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, be and the same is hereby enlarged to and including the 15th day of November, 1914.

Dated, San Francisco, Cal., October 15, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Oct. 15, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2286]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation Enlarging Time of Defendants to December 1, 1914, to File Record and Docket Case.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time of the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the *North* Circuit to the District Court of the United States for the Northern District of California, may be enlarged to and including the 1st day of December, 1914.

Dated, San Francisco, Cal., November 15, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for Said Defendants. [2287]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Order Enlarging Time of Defendants to December  
1, 1914, to File Record and Docket Case.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,

IT IS HEREBY ORDERED that the time of the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, be and the same is hereby enlarged to and including the 1st day of December, 1914.

Dated, San Francisco, Cal., November 14th, 1914.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Nov. 14, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2288]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation Enlarging Time of Defendants to  
December 15, 1914, to File Record and Docket  
Case.**

IT IS HEREBY STIPULATED AND AGREED  
by and between the respective parties hereto that  
the time of the defendants herein, James B.  
Smith, F. C. Mills and E. H. Mayer, for filing the  
record hereof and docketing this case on writ of error  
from the United States Circuit Court of Appeals for  
the *North* Circuit to the District Court of the United  
States for the Northern District of California, may  
be enlarged to and including the 15th day of Decem-  
ber, 1914.

Dated, San Francisco, Cal., November 30th, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United  
States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for said Defendants. [2289]



*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Order Enlarging Time of Defendants to December  
15, 1914, to File Record and Docket Case.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,

IT IS HEREBY ORDERED that the time of the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, be and the same is hereby enlarged to and including the 15th day of December, 1914.

Dated, San Francisco, Cal., November 30th, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Nov. 30, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2290]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation Enlarging Time of Defendants to  
January 15, 1915, to File Record and Docket  
Case.**

IT IS HEREBY STIPULATED AND AGREED  
by and between the respective parties hereto that the  
time of the defendants herein, James B. Smith, F. C.  
Mills and E. H. Mayer, for filing the record hereof  
and docketing this case on writ of error from the  
United States Circuit Court of Appeals for the Ninth  
Circuit to the District Court of the United States for  
the Northern District of California, may be enlarged  
to and including the 15th day of January, 1915.

Dated, San Francisco, Cal., December 15th, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United  
States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for said Defendants. [2291]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH,

Defendants.

**Order Enlarging Time of Defendants to January 15,  
1915, to File Record and Docket Case.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,

IT IS HEREBY ORDERED that the time of the defendants herein, James B. Smith, F. C. Mills, and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, be and the same hereby is enlarged to and including the 15th day of January, 1915.

Dated, San Francisco, Cal., December 15th, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Dec. 15, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2292]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation Enlarging Time of Defendants to  
January 20, 1915, to File Record and Docket  
Case.**

IT IS HEREBY STIPULATED AND AGREED  
by and between the respective parties hereto that  
the time of the defendants herein, James B. Smith,  
F. C. Mills and E. H. Mayer, for filing the record  
hereof and docketing this case on writ of error from  
the District Court of the United States for the North-  
ern District of California, to the United States Cir-  
cuit Court of Appeals for the Ninth Circuit, may be  
enlarged to and including the 20th day of January,  
1915.

Dated, San Francisco, Cal., January 14th, 1915.

THEO. J. ROCHE,

Assistant to the Attorney General of the United  
States.

STANLEY MOORE,

Attorney for said Defendants.

It is so ordered.

WM. C. VAN FLEET,

Judge.



[Endorsed]: Filed Jan. 15, 1915. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2293]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation Enlarging Time of Defendants to Feb-  
ruary 19, 1915, to File Record and Docket  
Case.**

IT IS HEREBY STIPULATED AND AGREED  
by and between the respective parties hereto that the  
time of the defendants herein, James B. Smith, F. C.  
Mills and E. H. Mayer, for filing the record hereof  
and docketing this case on Writ of Error from the  
District Court of the United States for the Northern  
District of California, to the United States Circuit  
Court of Appeals for the Ninth Circuit, may be en-  
larged to and including the 19 day of February, A. D.  
1915.

Dated, San Francisco, Calif., January 19th, A. D.  
1915.

THEO. J. ROCHE,

Assistant to the Attorney General of the United  
States.

PETER F. DUNNE,

STANLEY MOORE,

*Attorney for said Defendants.*

IT IS SO ORDERED BY THE COURT.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Jan. 19, 1915. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2294]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation Enlarging Time of Defendants to Feb-  
ruary 28, 1915, to File Record and Docket  
Case.**

It is hereby stipulated and agreed by and between the respective parties hereto that the time of the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error to the United States Circuit Court of Appeals for the Ninth Circuit from the District Court of the United States for the Northern District of California, may be enlarged to and including the 28th day of February, 1915.

Dated, San Francisco, Cal., February 19th, 1915.

THEO. J. ROCHE,

Assistant to the Attorney General.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for said Defendants. [2295]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Order Enlarging Time of Defendants to February  
28, 1915, to File Record and Docket Case.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,

IT IS HEREBY ORDERED that the time of the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error to the United States Circuit Court of Appeals for the Ninth Circuit from the District Court of the United States for the Northern District of California, be and the same hereby is enlarged to and including the 28th day of February, 1915.

Dated, San Francisco, Cal., February 18th, 1915.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Feb. 18, 1915. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2296]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN L. HOWARD et al.,

Defendants.

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Bond for Costs on Writ of Error to the District  
Court of the United States for the Northern  
District of California.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, James B. Smith, F. C. Mills, and E. H. Mayer, as principals, and Globe Indemnity Company, a corporation, as surety, are held and firmly bound unto the United States of America in the full and just sum of Five Hundred Dollars, to be paid to the said United States of America, to which payment, well and truly to be made, we bind ourselver, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of



May, in the year of our Lord one thousand nine hundred and fourteen.

WHEREAS, lately at a District Court of the United States, for the Northern District of California, in a suit depending in said court, between the United States of America, plaintiff, and [2297] James B. Smith, F. C. Mills and E. H. Mayer, defendants, a judgment and sentence were rendered against the said James B. Smith, and against the said F. C. Mills, and against the said E. H. Mayer, and the said James B. Smith, and the said F. C. Mills, and the said E. H. Mayer having obtained from said court a writ of error to reverse the said judgment and sentence against them, and each of them, in the aforesaid cause, and a citation directed to the said United States of America, citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, thirty (30) days from and after the day of said citation, which citation has been duly served;

NOW, the condition of the above obligation is such, that if the said James B. Smith, and the said F. C. Mills, and the said E. H. Mayer shall prosecute said writ of error to effect, and answer all costs involved therein, then the above obligation to be void; else to remain in full force and virtue.

JAMES B. SMITH. (Seal)

FRED. C. MILLS. (Seal)

EDWARD H. MAYER. (Seal)

GLOBE INDEMNITY COMPANY,

By HARRY W. LOBB. (Seal)

Acknowledged before me the day and year first above written.

[Seal] FRANCIS KRULL,  
United States Commissioner North'n Dist. of California.

Form of bond and sufficiency of surety approved.  
M. T. DOOLING,  
Judge.

[Endorsed]: Filed May 18, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2298]

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**(Bond to Appear of Defendant Jas. B. Smith.)**

United States of America,  
Northern District of California,—ss.

BE IT REMEMBERED, that on this 20th day of March, in the year of our Lord one thousand nine hundred and fourteen before the undersigned, a United States Commissioner, duly appointed by the District Court of the United States for the Northern District of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress, in that behalf, personally appeared James B. Smith, as principal, and Globe Indemnity Company, as surety, and jointly and severally acknowledged themselves to be indebted to the United States of America in the sum of Ten Thousand (\$10,000.00) Dollars, separately to be levied and made out of their respective goods and chattels, lands and tenements, to the use of the said United States.

The conditions of the above recognizance is such, that, whereas an indictment has been found by the Grand Jury of the United States for the Northern District of California, and filed on the 27th day of February, A. D. 1913, in the District Court of the United States, for said Northern District of California, charging the said James B. Smith with conspiring to defraud the United States Government, theretofore committed at the District aforesaid, contrary to the form of the statute of the United States, in such case made and provided.

AND WHEREAS, a verdict of guilty on said indictment was rendered on February 18th, 1914, and on March 19th, 1914, the Court sentenced the said defendant James B. Smith to imprisonment in the penitentiary at San Quentin for the period of eighteen months, and to pay a fine of \$5,000.00 and the said Court thereupon granted a [2299] stay of execution of judgment for thirty (30) days, and made an order admitting the said defendant James B. Smith to bail in the sum of Ten Thousand (\$10,000.00) Dollars during the pendency of proceedings on appeal and during said stay of execution and during all other stays of execution of proceedings that may hereafter be granted.

AND WHEREAS, the said James B. Smith has been required to give a recognizance, with sureties, in the sum of Ten Thousand (\$10,000.00) Dollars for his appearance.

NOW THEREFORE, if the said James B. Smith shall personally appear at the District Court of the United States, for the Northern District of Cali-

fornia, to be holden at the courtroom of said Court, in the City of San Francisco, on the 18th day of April, A. D. 1914, at 10 o'clock in the forenoon of that day, and afterward whenever or wherever he may be required to answer the said indictment and said judgment and all matters and things that may be objected against him whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises, and not depart the said Court without leave first obtained and shall render himself amenable to any and all orders of this court and the United States Circuit Court of Appeals for the Ninth Circuit and United States Supreme Court or any of said courts, and shall appear for judgment and render himself in execution thereof, then this recognizance shall be void, otherwise, to remain in full effect and virtue.

JAMES B. SMITH,

GLOBE INDEMNITY COMPANY.

By JOY LICHTENSTEIN, (Seal)

Attorney in Fact.

Acknowledged before me the day and year first above written.

[Seal]

W. B. MALING,

United States Commissioner for the Northern District of California, at San Francisco. [2300]

APPROVED March 20, 1914.

M. T. DOOLING,

Judge.

Form and sufficiency of bond satisfactory.

M. I. SULLIVAN,

THEO. J. ROCHE,

Special Assistants U. S. Atty. General.



[Endorsed]: Filed March 20, 1914. Walter B. Maling, Clerk. [2301]

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**(Bond to Appear of Defendant F. C. Mills.)**

United States of America,  
Northern District of California,—ss.

BE IT REMEMBERED, that on this 20th day of March, in the year of our Lord one thousand nine hundred and fourteen before the undersigned, a United States Commissioner, duly appointed by the District Court of the United States for the Northern District of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the Acts of Congress, in that behalf, personally appeared F. C. Mills, as principal, and Globe Indemnity Company, as surety, and jointly and severally acknowledged themselves to be indebted to the United States of America in the sum of Seven Thousand Five Hundred (\$7,500.00) Dollars, separately to be levied and made out of their respective goods and chattels, lands and tenements, to the use of the said United States.

The conditions of the above recognizance is such, that whereas, an indictment has been found by the Grand Jury of the United States for the Northern District of California, and filed on the 27th day of February, A. D. 1913, in the District Court of the United States, for said Northern District of California, charging the said F. C. Mills with conspiring to defraud the United States Government, thereto-

fore committed at the District aforesaid, contrary to the form of the statute of the United States, in such case made and provided.

AND WHEREAS, a verdict of guilty on said indictment was rendered on February 18th, 1914, and on March 19th, 1914, the Court sentenced the said defendant F. C. Mills to imprisonment in the Penitentiary at San Quentin for the period of Eighteen months, [2302] and the said Court thereupon granted a stay of execution of judgment for thirty (30) days, and made an order admitting the said defendant F. C. Mills to bail in the sum of Seven Thousand Five Hundred (\$7,500.00) Dollars during the pendency of proceedings on appeal and during said stay of execution and during all other stays of execution of proceedings that may hereafter be granted.

AND WHEREAS, the said F. C. Mills has been required to give a recognizance, with sureties, in the sum of Seven Thousand Five Hundred (\$7,500.00) Dollars for his appearance.

NOW, THEREFORE, if the said F. C. Mills shall personally appear at the District Court of the United States, for the Northern District of California, to be holden at the courtroom of said Court, in the City of San Francisco, on the 18th day of April, A. D. 1914, at 10 o'clock in the forenoon on that day, and afterward whenever or wherever he may be required to answer the said indictment and said judgment and all matters and things that may be objected against him whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises, and not depart the said

Court without leave first obtained and shall render himself amenable to any and all orders of this court and the United States Circuit Court of Appeals for the Ninth Circuit and United States Supreme Court or any of said courts, and shall appear for judgment and render himself in execution thereof, then this recognizance shall be void, otherwise, to remain in full effect and virtue.

F. C. MILLS,

GLOBE INDEMNITY COMPANY.

By JOY LICHTENSTEIN, (Seal)

Attorney in Fact.

Acknowledged before me the day and year first above written.

[Seal]

W. B. MALING,

United States Commissioner.

For the Northern District of California, at San Francisco. [2303]

APPROVED March 20, 1914.

M. T. DOOLING,

Judge.

Form and sufficiency of Bond satisfactory.

M. I. SULLIVAN,

THEO. J. ROCHE,

Special Assistants U. S. Atty. General.

[Endorsed]: Filed March 20, 1914. Walter B. Maling, Clerk. [2304]

**(Bond to Appear of Defendant E. H. Mayer.)**

United States of America,  
Northern District of California,—ss.

BE IT REMEMBERED, that on this 20th day of March, in the year of our Lord one thousand nine hundred and fourteen before the undersigned, a United States Commissioner, duly appointed by the District Court of the United States for the Northern District of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress, in that behalf, personally appeared E. H. Mayer, as principal, and Globe Indemnity Company, as surety, and jointly and severally acknowledged themselves to be indebted to the United States of America in the sum of Five Thousand (\$5,000.00) Dollars, separately to be levied and made out of their respective goods and chattels, lands and tenements, to the use of the said United States.

The conditions of the above recognizance is such, that, whereas, an indictment has been found by the Grand Jury of the United States for the Northern District of California, and filed on the 27th day of February, A. D. 1913, in the District Court of the United States, for said Northern District of California, charging the said E. H. Mayer with conspiring to defraud the United States Government, theretofore committed at the District aforesaid, contrary to the form of the statute of the United States, in



such case made and provided.

AND WHEREAS, a verdict of guilty on said indictment was rendered on February 18th, 1914, and on March 19th, 1914, the Court sentenced the said defendant E. H. Mayer to imprisonment in the [2305] Alameda County Jail for the period of one (1) year and the said Court thereupon granted a stay of execution of judgment for thirty (30) days, and made an order admitting the said defendant E. H. Mayer to bail in the sum of Five Thousand Dollars during the pendency of proceedings on appeal and during said stay of execution and during all other stays of execution of proceedings that may hereafter be granted.

AND WHEREAS, the said E. H. Mayer has been required to give a recognizance, with sureties, in the sum of Five Thousand (\$5,000.00) Dollars for his appearance.

NOW, THEREFORE, if the said E. H. Mayer shall personally appear at the District Court of the United States, for the Northern District of California, to be holden at the courtroom of said court, in the City of San Francisco, on the 18th day of April, A. D. 1914, at 10 o'clock in the forenoon of that day, and afterward whenever or wherever he may be required to answer the said indictment and said judgment and all matters and things that may be objected against him whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises, and not depart the said Court without leave first obtained and shall render himself amenable to any and all

orders of this court and the United States Circuit Court of Appeals for the Ninth Circuit and United States Supreme Court or any of said Courts, and shall appear for judgment and render himself in execution thereof, then this recognizance shall be void, otherwise, to remain in full effect and virtue.

EDWARD H. MAYER,

GLOBE INDEMNITY COMPANY.

By JOY LICHTENSTEIN, (Seal)

Attorney in Fact.

Acknowledged before me the day and year first above written.

[Seal]

W. B. MALING,

United States Commissioner.

For the Northern District of California, at San Francisco. [2306]

APPROVED March 20, 1914.

M. T. DOOLING,

Judge.

Form and sufficiency of bond satisfactory.

M. I. SULLIVAN,

THEO. J. ROCHE,

Special Assistants to U. S. Atty. General.

[Endorsed]: Filed March 20, 1914. Walter B. Maling, Clerk. [2307]

*In the District Court of the United States, Northern  
District of California, First Division.*

No. 5433.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Substitution of Attorneys.**

We, the undersigned, James B. Smith, F. C. Mills and E. H. Mayer, and each of us, defendants in the above-entitled cause, hereby appoint Peter F. Dunne, Esq., and Stanley Moore, Esq., as and for our attorneys in said cause in the place and stead of Edward J. McCutchen, Esq., Warren Olney, Jr., Esq., Samuel Knight, Esq., Stanley Moore, Esq., and A. P. Black, Esq., our present attorneys of record in said cause.

Dated, San Francisco, California, October 29, 1914.

JAMES B. SMITH.

FRED. C. MILLS.

EDWARD H. MAYER. [2308]

We, the undersigned, and each of us, do hereby consent to the substitution of Peter F. Dunne, Esq. and Stanley Moore, Esq., as attorneys for the defendants, James B. Smith, F. C. Mills and E. H. Mayer, in the above-entitled cause in our place and stead.

Dated, San Francisco, California, October 30th,  
1914.

EDWARD J. McCUTCHEN.

WARREN OLNEY, Jr.

SAMUEL KNIGHT.

A. P. BLACK.

STANLEY MOORE.

We, the undersigned, do hereby accept the foregoing appointment as attorneys for the aforementioned defendants, James B. Smith, F. C. Mills and E. H. Mayer in the above-entitled cause.

Dated, San Francisco, California, October 30th,  
1914.

PETER F. DUNNE.

STANLEY MOORE.

[Endorsed]: Filed Oct. 30, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2309]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.



**Stipulation and Order Providing That Certain Exhibits Hereinbelow Designated Shall be Printed in a Volume Separate from the Bill of Exceptions, Which Said Volume, However, Shall be Transmitted to the Circuit Court of Appeals as a Part of Said Bill of Exceptions.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the following exhibits, to wit:

U. S. Exhibits 124, 125 (Tables "A," "B," "C" and "D"), 130, 151, 126 (one sheet only, and to be so designated), 137, 150, 135, Defendants' Exhibit "KK," and Defendants' Exhibit introduced and received in evidence just prior to Defendants' Exhibit "SS," being barge table showing 4.99 per cent, as shown and referred to on page 1890 of Bill of Exceptions.

Also U. S. Exhibits Nos. 152, 153, 154 and 155; also complete copy of an entry including invoice and bill of lading; also drawback claim and affidavit unless already inserted at length in Bill of Exceptions, shall be printed in a volume separate from the Bill of Exceptions herein, but that said volume shall be regarded, as to all intents and purposes, an integral part of said Bill of Exceptions, with the same force and effect as if incorporated at large therein.

Dated at San Francisco, California, this 19th day of January, 1915.

THEO. J. ROCHE,  
Assistant to the Attorney General of the United  
States.

PETER F. DUNNE,  
STANLEY MOORE,  
Attorneys for Defendants, James B. Smith, F. C.  
Mills and E. H. Mayer.

Now, on this day, for good cause shown, and pursuant to the above and foregoing stipulation, it is ordered that the above designated exhibits shall be printed in a volume separate from the Bill of Exceptions and that said volume shall be transmitted to the Circuit Court of Appeals as in all respects a part of said Bill of Exceptions, with the same force and effect as if incorporated at large therein; and the Clerk of the above-entitled Court is hereby directed and ordered to so print and transmit said exhibits.

Dated at San Francisco, California, this 19th day of January, 1915.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed Jan. 19, 1915. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2311]

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**Certificate of Clerk U. S. District Court to  
Transcript of Record on Writ of Error.**

I, W. B. Maling, Clerk of the District Court of the United States of America for the Northern District of California, do hereby certify that the foregoing

2311 pages, numbered from 1 to 2311, inclusive (in five volumes) contains a full, true and correct transcript of certain records and proceedings, in the case of the United States of America vs. James B. Smith et al., numbered 5,233, as the same now remain on file and of record in the office of the Clerk of said District Court; said transcript having been prepared pursuant to and in accordance with the "Praecipe" (a copy of which is embodied in this transcript), and the instructions of the Attorneys for Defendants and Appellants herein.

I further certify that the costs for preparing and certifying the foregoing transcript on Writ of Error is the sum of One Thousand Four Hundred Forty-seven Dollars and Ten Cents (\$1,447.10), and that the same has been paid to me by the attorneys for the appellants herein.

Annexed hereto is the Original Citation on Writ of Error and the Original Writ of Error with the return of the said District Court to said Writ of Error attached thereto.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 27th day of February, A. D. 1915.

W. B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk.

[Internal Revenue Stamp, Canceled February 26, 1915. C. W. C.] [2312]

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. —.

JAMES B. SMITH, F. C. MILLS and E. H.  
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Writ of Error (Original).**

United States of America,—ss.

The President of the United States of America, to  
the Honorable, the Judges of the District Court  
of the United States, for the Northern District  
of California, Greeting:

BECAUSE, in the record and proceedings, as also  
in the rendition of the judgment of a plea which is  
in the said District Court, before the Honorable  
Maurice T. Dooling, one of you, between the United  
States of America, plaintiff and defendant in error,  
and James B. Smith, F. C. Mills and E. H. Mayer,  
defendants and plaintiffs in error, a manifest error  
hath happened, to the great damage of the said plain-  
tiffs in error, and each of them, as by their complaint  
appears:

We, being willing that error, if any hath been,  
should be duly corrected, and full and speedy justice  
done to the [2313] parties aforesaid in this be-  
half, do command you, if judgment be therein given,



that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 18th day of May, in the year of our Lord One Thousand, Nine Hundred and Fourteen.

[Seal]

W. B. MALING,  
Clerk U. S. District Court.

By C. W. Calbreath,  
Deputy Clerk.

Allowed by:

M. T. DOOLING,  
U. S. Dist. Judge. [2314]

Service of the above Writ of Error made this 18th day of May, in the year of our Lord one thousand nine hundred and fourteen, upon the District Court of the United States, for the Northern District of California, by filing with me as Clerk of said Court,

a duly certified copy of said Writ of Error.

[Seal]

W. B. MALING,

Clerk of the District Court of the United States, for  
the Northern District of California.

By C. W. Calbreath,

Deputy Clerk. [2315]

[Endorsed]: No. 5233. In the United States Circuit Court of Appeals, for the Ninth Circuit. James B. Smith, F. C. Mills and E. H. Mayer, Plaintiffs in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed May 18, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2316]

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### **Return to Writ of Error.**

The Answer of the Judges of the District Court of the United States of America, for the Northern District of California, to the within Writ of Error.

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this Writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this Writ was on the 18th day of May, A. D. 1914, duly lodged in

the case in this Court for the within-named defendants in Error.

By the Court:

[Seal]

W. B. MALING,

Clerk United States District Court, Northern District of California.

By C. W. Calbreath,  
Deputy Clerk.

[Internal Revenue Stamp, Canceled February 26,  
1915. C. W. C.] [2317]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. —.

JAMES B. SMITH, F. C. MILLS and E. H.  
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Citation on Writ of Error (Original).**

United States of America,—ss.

The President of the United States of America, to  
the United States of America, and to Matthew  
I. Sullivan, Esquire, and Theodore J. Roche, Es-  
quire, Special Assistants to the Attorney-Gen-  
eral of the United States, Greeting:

You are hereby cited and admonished to be and ap-  
pear at a United States Circuit Court of Appeals

for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the United States District Court for the Northern District of California, wherein James B. Smith, F. C. Mills and E. H. Mayer are plaintiffs in error, and the United States of America is defendant in error, to show cause, if any there be, why the judgment [2318] rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 18th day of May in the year of our Lord one thousand nine hundred and fourteen.

M. T. DOOLING,

United States District Judge.

[Seal]

Attest: W. B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk.

Due and legal service of the above and foregoing citation, and receipt of a copy thereof, is hereby accepted and admitted, in the City and County of San Francisco, State of California, this 18th day of May, A. D. 1914.

MATT I. SULLIVAN,

THEO. J. ROCHE,

Special Assistants to the Attorney General of the United States. [2319]



[Endorsed]: No. 5233. U. S. District Court, Northern District of California, First Division. James B. Smith, F. C. Mills and E. H. Mayer, Plaintiffs in Error, vs. United States of America, Defendant in Error. Citation on Writ of Error. Filed May 18, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2320]

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[Endorsed]: No. 2576. United States Circuit Court of Appeals for the Ninth Circuit. James B. Smith, F. C. Mills and E. H. Mayer, Plaintiffs in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Northern District of California, First Division. Filed February 27, 1915.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

JAMES B. SMITH, F. C. MILLS and E. H.  
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Stipulation Extending Time to [July 17, 1914 to]  
File Record.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time of the Plaintiffs in Error herein, James B. Smith, F. C. Mills and E. H. Mayer for printing the record and filing and docketing this cause on appeal in the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby extended to and including the 17th day of July, 1914.

Dated: San Francisco, June 15, 1914.

M. I. SULLIVAN,  
THEO. J. ROCHE,

Special Assistants to the Attorney General of the  
United States.

EDW'D J. McCUTCHEN,  
WARREN OLNEY, Jr.,  
SAM'L KNIGHT,  
STANLEY MOORE,  
A. P. BLACK,

Attorneys for Plaintiffs in Error, James B. Smith,  
F. C. Mills and E. H. Mayer.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

JAMES B. SMITH, F. C. MILLS and E. H.  
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendants in Error.

**Order Enlarging Time to [July 17, 1914, to] File  
Record.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,

IT IS HEREBY ORDERED that the time of the Plaintiffs in Error herein, James B. Smith, F. C. Mills and E. H. Mayer, for printing the record and filing and docketing this cause on appeal in the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby enlarged and extended to and including the 17th day of July, 1914.

Dated: San Francisco, June 16, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit. James B. Smith et al., Plaintiffs in Error, vs. United States of America, Defendant in Error. Stipulation and Order Extending Time to File Record. Filed Jun. 16, 1914. F. D. Monckton, Clerk.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

JAMES B. SMITH, F. C. MILLS and E. H.  
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Stipulation Enlarging Time of Plaintiffs in Error  
to [September 15, 1914, to] File Record and  
Docket Case.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time of the plaintiffs in error herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, may be enlarged to and including the 15th day of September, 1914.

Dated, San Francisco, California, August 12, 1914.

MATT. I. SULLIVAN,  
THEO. J. ROCHE,

Assistants to the Attorney General of the United  
States.

EDW'D J. McCUTCHEN,  
WARREN OLNEY, Jr.,  
SAMUEL KNIGHT,  
STANLEY MOORE,  
A. P. BLACK,

Attorneys for Said Plaintiffs in Error.

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

JAMES B. SMITH, F. C. MILLS and E. H.  
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Order Enlarging Time of Plaintiffs in Error to  
[September 15, 1914, to] File Record and  
Docket Case.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,—

IT IS HEREBY ORDERED that the time of the plaintiffs in error herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, be and the same is hereby enlarged to and including the 15th day of September, 1914.

Dated, San Francisco, California, August 14, 1914.

WM. W. MORROW,  
Circuit Judge.

[Endorsed]: In the U. S. Circuit Court of Appeals, for the Ninth Circuit. James B. Smith, F. C. Mills and E. H. Mayer, Plaintiffs in Error, vs. United States of America, Defendant in Error. Stipulation and Order Enlarging Time of Plaintiffs in Error to File Record and Docket Case. Filed Aug. 14, 1914. F. D. Monckton, Clerk.



*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

JAMES B. SMITH, F. C. MILLS and E. H.  
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Stipulation Enlarging Time of Plaintiffs in Error to  
[August 16, 1914, to] File Record and Docket  
Case.**

IT IS HEREBY STIPULATED AND AGREED  
by and between the respective parties hereto that the  
time of the plaintiffs in error herein, James B.  
Smith, F. C. Mills and E. H. Mayer, for printing  
and filing the record hereof and docketing this case  
on writ of error from the United States Circuit  
Court of Appeals for the Ninth Circuit to the Dis-  
trict Court of the United States for the Northern  
District of California, may be enlarged to and in-  
cluding the 16th day of August, 1914.

Dated, San Francisco, July 16, 1914.

MATT. I. SULLIVAN,  
THEODORE J. ROCHE,

Assistants to the Attorney General of the United  
States.

EDW'D J. McCUTCHEN,  
WARREN OLNEY, Jr.,  
SAMUEL KNIGHT,  
STANLEY MOORE,  
A. P. BLACK,

Attorneys for Said Plaintiffs in Error.

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

JAMES B. SMITH, F. C. MILLS and E. H.  
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Order Enlarging Time of Plaintiffs in Error to  
[August 16, 1914, to] File Record and Docket  
Case.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,—

IT IS HEREBY ORDERED that the time of the plaintiffs in error herein, James B. Smith, F. C. Mills and E. H. Mayer, for printing and filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, be and the same is hereby enlarged to and including the 16th day of August, 1914.

Dated, San Francisco, July 17th, 1914.

W. W. MORROW,

Circuit Judge.

[Endorsed]: United States Circuit Court of Appeals for the Ninth Circuit. James B. Smith, F. C. Mills and E. H. Mayer, Plaintiffs in Error, vs. United States of America, Defendant in Error. Stipulation and Order Enlarging Time of Plaintiffs

in Error to File Record and Docket Case. Filed Jul. 17, 1914. F. D. Monckton, Clerk.

No. 2576. United States Circuit Court of Appeals for the Ninth Circuit. Three Orders Under Rule 16 Enlarging Time to File Record Thereof and to Docket Case. Refiled Feb. 27, 1915. F. D. Monckton, Clerk.